



March 20, 2009

ENGROSSED HOUSE BILL No. 1379

DIGEST OF HB 1379 (Updated March 17, 2009 1:31 pm - DI 73)

Citations Affected: IC 6-8.1; IC 22-1; IC 22-3; IC 22-4; IC 22-4.1.

Synopsis: Unemployment compensation and labor issues. Provides that under the extended benefits law reimbursable employers pay only the portion of dollars not reimbursed by the federal government. Requires that extended benefits be paid for at least 13 weeks after a determination that the state "on" indicator is in effect. Changes the "off" indicator to the maximum allowable under federal law. Changes the taxable wage base from \$7,000 to \$10,000. Changes wage credits for computation of a claim from \$9,250 to \$11,000. Makes severance pay, subpay, bonuses, gifts, and prizes deductible income. Makes vacation pay deductible income and removes the ability to receive vacation pay after a layoff without reducing benefits. Expands the definition of an "employing unit" to include all forms of legal entities. Changes the definition of "seasonal employment" from 26 weeks to 42 weeks. Describes the notice a seasonal worker must receive. Phases out the current tax rate schedule, and provides a new tax rate schedule effective in 2010. Provides for an employer surcharge for 2009 that is
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Effective: Upon passage; July 1, 2009.

Niezgodski, Barnes, Dvorak, Soliday
(SENATE SPONSORS — KRUSE, HERSHMAN, DILLON, BRODEN,
WALTZ, DEIG, CHARBONNEAU, TALLIAN)

January 13, 2009, read first time and referred to Committee on Labor and Employment.
February 5, 2009, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

February 17, 2009, reported — Do Pass.

February 19, 2009, read second time, ordered engrossed. Engrossed.

February 24, 2009, read third time, passed. Yeas 55, nays 41.

SENATE ACTION

March 2, 2009, read first time and referred to Committee on Pensions and Labor.

March 3, 2009, reassigned to Committee on Tax and Fiscal Policy pursuant to Senate Rule 65(b).

March 19, 2009, amended, reported favorably — Do Pass.

EH 1379—LS 7558/DI 96+



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equal to 10% of the employer's applicable 2009 contribution rate multiplied by the employer's 2009 taxable wages. Provides for a surcharge on a seasonal employer who does not make a seasonal designation or reduce the total annual wages reported. Specifies that any surcharge amounts paid by an employer shall be credited to the employer's experience account. Provides that for initial claims filed for any week beginning on and after January 1, 2010, an eligible individual who is totally unemployed during each of the first four weeks in the individual's benefit period shall be paid for the week an amount equal to 50% of the individual's prior average weekly wage. Reduces the individual's weekly benefit amount by 10% after week four of the individual's benefit period. Reduces the individual's weekly benefit amount by an additional 10% after week six of the individual's benefit period and by an additional 10% after week eight of the individual's benefit period. Provides that the weekly benefit for an eligible individual who is totally unemployed and participating in department approved training is not reduced as long as the individual continues to be totally unemployed and participate in the training. Specifies that the weekly benefit amount may not be less than \$50. Provides that if an individual knowingly: (1) fails to disclose amounts earned during any week in the individual's waiting period, benefit period, or extended benefit period; or (2) fails to disclose or has falsified any fact; that would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits or extended benefits, the department of workforce development (department) shall cancel all of the individual's wage credits established before the period in which the failure to disclose or falsification occurs and any benefits or extended benefits that might otherwise have become payable to the individual, and any benefit rights or extended benefit rights based on those wage credits shall be forfeited. Adds restrictions on an employer's ability to create a new experience account (account) for purposes of reducing the employer's contribution rate. Provides that an individual, group, association, or other entity that knowingly advises or assists an individual in certain failures to disclose information or falsification of information is jointly and severally liable to the department for all overpayments and penalties related to the failure to disclose or falsification. Removes provisions in the law specifying that a person who: (1) accepts an offer of payment offered by an employer to avert or lessen the effect of a layoff or plant closure; and (2) otherwise meets the eligibility requirements for benefits; is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person. Specifies that if: (1) an otherwise eligible individual fails without good cause (as determined by the commissioner under rules prescribed by the commissioner) to attend a job search workshop or a training or retraining course when directed by the department; and (2) the workshop or course is available at public expense; the individual is not eligible for benefits with respect to any week in which the failure occurred. Provides that, for purposes of the unemployment benefit statutes, the term "effort to secure full-time work" includes submitting at least three separate applications for work each week that the individual is claiming benefits. Requires a claimant to serve a waiting period upon filing any initial or additional claim if the claimant has received from any source (other than unemployment insurance benefits) remuneration that exceeds the claimant's maximum weekly benefit in each week for six or more weeks preceding the claim or initial claim, regardless of whether the claimant has previously served a waiting period. Provides that as conditions precedent to the payment of benefits to an individual for benefit periods established on and after January 1, 2010: (1) the individual must have established, after the last day of the individual's last base period wage credits equal to at least 1.5 times the wages paid to the individual in the calendar quarter in which the individual's wages

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were highest; and (2) the individual must have established wage credits in the last two calendar quarters of the individual's base period in a total amount of not less than \$2,500 and an aggregate in the four calendar quarters of the individual's base period of not less than \$4,200. Provides that for a benefit year established on and after January 1, 2010, an individual may not receive benefits in a benefit year unless the individual has earned wage credits exceeding \$1,000 in three separate calendar quarters of the individual's base period. Deletes from the law a provision specifying that if a seasonal employer operates its business or its seasonal operation during a period or periods of 26 weeks or more in a calendar year, the employer shall be determined by the department to have lost its seasonal status with respect to that business or operation effective at the end of the then current calendar quarter. Allows all employers in an individual's base period to contest the individual's application for unemployment benefits. Provides that the definition of "discharge for just cause" includes the violation of a rule regarding attendance. Specifies that an employer's failure to provide a reason for termination at the time of discharge shall not prevent a finding of discharge for just cause if the individual is aware or should be aware of the reason for termination. Provides that work is not considered unsuitable if: (1) during the first four consecutive weeks of claiming benefits, the work pays not less than 80% of the individual's prior weekly wage; (2) during the fifth through the twelfth consecutive weeks of claiming benefits, the work pays not less than 60% of the individual's prior weekly wage; and (3) after 12 consecutive weeks of claiming benefits, the work pays not less than 50% of the individual's prior weekly wage. Provides for the sharing of information concerning the classification of individuals as independent contractors among the department of labor, the department of state revenue, the department, and the worker's compensation board of Indiana. Provides that certain information pertaining to employee classification shared among the state agencies is confidential and may not be published or open to public inspection. Charges half of the benefits paid to an employer's account if the employer fails to respond to a request by the department and the employer eventually prevails in the appeal. Provides for a credit to the employer's account equal to the amount of any overpayment recovered. Expands the definition of "gross misconduct" for which an individual's wage credits are canceled. Provides that the employer has the burden of proof that a discharged employee's conduct was gross misconduct, and allows evidence that the employer filled or maintained the position or job held by a discharged employee after the employee's discharge. Provides that it is not a defense that a discharged employee has not been prosecuted or convicted for the conduct. Deletes the requirement that a felony or a Class A misdemeanor may constitute gross misconduct only if the felony or misdemeanor is admitted by the individual or has resulted in a conviction. Expands the types of information a notice of a claim for unemployment benefits must provide. Requires the department to provide annually certain training to all administrative law judges, review board members, and other individuals who adjudicate claims. Requires the department to regularly monitor the hearings and decisions of individuals who adjudicate claims to ensure that the hearings and decisions strictly comply with the law, and provides for department disciplinary action up to and including termination for an individual's failure to do so. Authorizes the department to charge a reasonable processing fee not to exceed \$2 for records concerning an individual's last known employer that must be disclosed by court order. Establishes the form of notice given by an employer in connection with a plant closure or mass layoff. Authorizes the department to seek injunctive relief against an employer that fails to provide the required notice. Provides that an officer or employee of a state agency who knowingly or intentionally discloses confidential information

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concerning any suspected improper classification of an individual commits a Class A misdemeanor. Repeals: (1) expired employer rate schedules; (2) expired provisions concerning the skills 2016 training program; (3) the definition of "work week" used in a labor contract for purposes of deductible income; (4) a provision concerning payments received under a private unemployment benefit plan; (5) an expired definition of "dependent"; and (6) a provision concerning witness fees.

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March 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1379

A BILL FOR AN ACT to amend the Indiana Code concerning
labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-8.1-3-21.4 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: **Sec. 21.4. (a) This section applies after**
4 **December 31, 2009.**

5 (b) As used in this section, "contractor" means:

- 6 (1) a sole proprietor;
- 7 (2) a partnership;
- 8 (3) a firm;
- 9 (4) a corporation;
- 10 (5) a limited liability company;
- 11 (6) an association; or
- 12 (7) another legal entity;

13 that engages in construction and is authorized by law to do
14 business in Indiana. The term includes a general contractor, a
15 subcontractor, and a lower tiered contractor. The term does not
16 include the state, the federal government, or a political subdivision.

17 (c) The department shall cooperate with the:

EH 1379—LS 7558/DI 96+



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(1) department of labor created by IC 22-1-1-1;

(2) worker's compensation board of Indiana created by IC 22-3-1-1(a); and

(3) department of workforce development established by IC 22-4.1-2-1;

by sharing information concerning any suspected improper classification by a contractor of an individual as an independent contractor (as described in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

(d) For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

(e) An officer or employee of the department who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

SECTION 2. IC 22-1-1-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 22. (a) This section applies after December 31, 2009.

(b) As used in this section, "contractor" means:

(1) a sole proprietor;

(2) a partnership;

(3) a firm;

(4) a corporation;

(5) a limited liability company;

(6) an association; or

(7) another legal entity;

that engages in construction and is authorized by law to do business in Indiana. The term includes a general contractor, a subcontractor, and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.

(c) The department of labor shall cooperate with the:

(1) department of workforce development established by IC 22-4.1-2-1;

(2) department of state revenue established by IC 6-8.1-2-1; and

(3) worker's compensation board of Indiana created by IC 22-3-1-1(a);

by sharing information concerning any suspected improper classification by a contractor of an individual as an independent contractor (as described in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

(d) For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

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(e) An officer or employee of the department of labor who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

SECTION 3. IC 22-3-1-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) This section applies after December 31, 2009.

(b) As used in this section, "contractor" means:

- (1) a sole proprietor;
- (2) a partnership;
- (3) a firm;
- (4) a corporation;
- (5) a limited liability company;
- (6) an association; or
- (7) another legal entity;

that engages in construction and is authorized by law to do business in Indiana. The term includes a general contractor, a subcontractor, and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.

(c) The worker's compensation board of Indiana shall cooperate with the:

- (1) department of state revenue established by IC 6-8.1-2-1;
- (2) department of labor created by IC 22-1-1-1; and
- (3) department of workforce development established by IC 22-4.1-2-1;

by sharing information concerning any suspected improper classification by a contractor of an individual as an independent contractor (as described in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

(d) For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

(e) An officer or employee of the worker's compensation board of Indiana who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

SECTION 4. IC 22-4-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. ~~Except as provided in IC 22-4-5-3,~~ "Week" means a calendar week.

SECTION 5. IC 22-4-2-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 32. "Payment in lieu of contributions" means the required reimbursements by employers of benefits paid attributable to services performed for such employers which are liable to make these payments as provided in IC 19-7-1;

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22-4-10-1. ~~of this article.~~ These payments shall equal the **full** amount of regular benefits and ~~one-half (1/2) of the extended benefits~~ **part of benefits not reimbursed by the federal government under the Federal-State Extended Unemployment Compensation Act of 1970** paid ~~as that~~ are attributable to services in the employ of such liable employers.

SECTION 6. IC 22-4-2-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 34. (a) With respect to benefits for weeks of unemployment beginning after August 13, 1981, "extended benefit period" means a period which begins with the third week after a week for which there is a state "on" indicator and ends with **the later of the following**:

(1) The third week after the first week for which there is a state "off" indicator. ~~or~~

(2) The thirteenth consecutive week of such period.

(b) However, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(c) There is a state "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(1) equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two (2) calendar years; and

(2) equaled or exceeded

(A) with respect to benefits for weeks of unemployment beginning before September 25, 1982, four percent (4%); and

(B) with respect to benefits for weeks of unemployment beginning after September 25, 1982, five percent (5%).

However, with respect to benefits for weeks of unemployment beginning after ~~December 31, 1977~~, the determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if it did not contain subdivision (1) ~~and if the insured unemployment rate in subdivision (2) were:~~

(A) with respect to benefits for weeks of unemployment beginning before September 25, 1982, five percent (5%); and

(B) with respect to benefits for weeks of unemployment beginning after September 25, 1982; **is at least six percent**

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(6%).

Any week for which there would otherwise be a state "on" indicator shall continue to be such a week and may not be determined to be a week for which there is a state "off" indicator.

(d) There is a state "off" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, ~~the rate of insured unemployment (not seasonally adjusted) under this article:~~

- (1) ~~was less than one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two (2) calendar years; or~~
- (2) ~~was less than:~~

- (A) with respect to benefits for weeks of unemployment beginning before September 25, 1982, four percent (4%); and

- (B) with respect to benefits for weeks of unemployment beginning after September 25, 1982, five percent (5%);

the requirements of subsection (c) have not been met.

(e) With respect to benefits for weeks of unemployment beginning after August 13, 1981, "rate of insured unemployment," for purposes of subsections (e) and (f), means the percentage derived by dividing:

- (1) the average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent 13 consecutive week period (as determined by the board on the basis of this state's reports to the United States Secretary of Labor); by
- (2) the average monthly employment covered under this article for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such 13-week period.

(f) "Regular benefits" means benefits payable to an individual under this article or under the law of any other state (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. 8501 through 8525) other than extended benefits. "Additional benefits" means benefits other than extended benefits and which are totally financed by a state payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law. If extended compensation is payable to an individual by this state and additional compensation is payable to ~~him~~ **the individual** for the same week by any state, the individual may elect which of the two (2) types of compensation to claim.

(g) "Extended benefits" means benefits (including benefits payable

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to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. 8501 through 8525) payable to an individual under the provisions of this article for weeks of unemployment in the individual's "eligibility period". Pursuant to Section 3304 of the Internal Revenue Code extended benefits are not payable to interstate claimants filing claims in an agent state which is not in an extended benefit period, against the liable state of Indiana when the state of Indiana is in an extended benefit period. This prohibition does not apply to the first two (2) weeks claimed that would, but for this prohibition, otherwise be payable. However, only one such two (2) week period will be granted on an extended claim. Notwithstanding any other provisions of this chapter, with respect to benefits for weeks of unemployment beginning after October 31, 1981, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would, but for this clause, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(h) "Eligibility period" of an individual means the period consisting of the weeks in the individual's benefit period which begin in an extended benefit period and, if the individual's benefit period ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

(i) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(1) has received, prior to such week, all of the regular benefits including dependent's allowances that were available to the individual under this article or under the law of any other state (including benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. 8501 through 8525) in the individual's current benefit period that includes such week. However, for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to the individual although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit period or although a nonmonetary decision denying benefits is pending, the individual may subsequently be determined to be entitled to added regular benefits;

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(2) may be entitled to regular benefits with respect to future weeks of unemployment but such benefits are not payable with respect to such week of unemployment by reason of seasonal limitations in any state unemployment insurance law; or
 (3) having had the individual's benefit period expire prior to such week, has no, or insufficient, wages on the basis of which the individual could establish a new benefit period that would include such week;

and has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Act of 1974, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, ~~he~~ **the individual** is considered an exhaustee.

(j) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under Section 3304 of the Internal Revenue Code.

SECTION 7. IC 22-4-4-2, AS AMENDED BY P.L.98-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as otherwise provided in this section, "wages" means all remuneration as defined in section 1 of this chapter paid to an individual by an employer, remuneration received as tips or gratuities in accordance with Sections 3301 and 3102 et seq. of the Internal Revenue Code, and includes all remuneration considered as wages under Sections 3301 and 3102 et seq. of the Internal Revenue Code. However, the term shall not include any amounts paid as compensation for services specifically excluded by IC 22-4-8-3 or IC 22-4-8-3.5 from the definition of employment as defined in IC 22-4-8-1 and IC 22-4-8-2. The term shall include, but not be limited to, any payments made by an employer to an employee or former employee, under order of the National Labor Relations Board, or a successor thereto, or agency named to perform the duties thereof, as additional pay, back pay, or for loss of employment, or any such payments made in accordance with an agreement made and entered into by an employer, a union, and the National Labor Relations Board.

(b) The term "wages" shall not include the following:

- (1) That part of remuneration which, after remuneration equal to:
 - (A) seven thousand dollars (\$7,000), has been paid in a

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calendar year to an individual by an employer or ~~his~~ **the employer's** predecessor with respect to employment during any calendar year ~~subsequent to that begins after~~ December 31, 1982, **and before January 1, 2010; or**

(B) ten thousand dollars (\$10,000), has been paid in a calendar year to an individual by an employer or the employer's predecessor for employment during a calendar year that begins after December 31, 2009;

unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision, the term "employment" shall include service constituting employment under any employment security law of any state or of the federal government. However, nothing in this subdivision shall be taken as an approval or disapproval of any related federal legislation.

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment) made to, or on behalf of, an individual or any of the individual's dependents under a plan or system established by an employer which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical or hospitalization expenses in connection with sickness or accident disability; or

(D) death.

(3) The amount of any payment made by an employer to an individual performing service for it (including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment) on account of retirement.

(4) The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability made by an employer to, or on behalf of, an individual performing services for it and after the expiration of six (6) calendar months following the last calendar month in which the individual performed services for such employer.

(5) The amount of any payment made by an employer to, or on

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1 behalf of, an individual performing services for it or to the
2 individual's beneficiary:

3 (A) from or to a trust exempt from tax under Section 401(a) of
4 the Internal Revenue Code at the time of such payment unless
5 such payment is made to an individual performing services for
6 the trust as remuneration for such services and not as a
7 beneficiary of the trust; or

8 (B) under or to an annuity plan which, at the time of such
9 payments, meets the requirements of Section 401(a)(3),
10 401(a)(4), 401(a)(5), and 401(a)(6) of the Internal Revenue
11 Code.

12 (6) Remuneration paid in any medium other than cash to an
13 individual for service not in the course of the employer's trade or
14 business.

15 (7) The amount of any payment (other than vacation or sick pay)
16 made to an individual after the month in which the individual
17 attains the age of sixty-five (65) if the individual did not perform
18 services for the employer in the period for which such payment is
19 made.

20 (8) The payment by an employer (without deduction from the
21 remuneration of the employee) of the tax imposed upon an
22 employee under Sections 3101 et seq. of the Internal Revenue
23 Code (Federal Insurance Contributions Act).

24 SECTION 8. IC 22-4-4-3 IS AMENDED TO READ AS FOLLOWS
25 [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) For calendar quarters
26 beginning on and after April 1, 1979, and before April 1, 1984, "wage
27 credits" means remuneration paid for employment by an employer to
28 an individual. Wage credits may not exceed three thousand six hundred
29 sixty-six dollars (\$3,666) and may not include payments specified in
30 section 2(b) of this chapter.

31 (b) For calendar quarters beginning on and after April 1, 1984, and
32 before April 1, 1985, "wage credits" means remuneration paid for
33 employment by an employer to an individual. Wage credits may not
34 exceed three thousand nine hundred twenty-six dollars (\$3,926) and
35 may not include payments specified in section 2(b) of this chapter.

36 (c) For calendar quarters beginning on and after April 1, 1985, and
37 before January 1, 1991, "wage credits" means remuneration paid for
38 employment by an employer to an individual. Wage credits may not
39 exceed four thousand one hundred eighty-six dollars (\$4,186) and may
40 not include payments specified in section 2(b) of this chapter.

41 (d) For calendar quarters beginning on and after January 1, 1991,
42 and before July 1, 1995, "wage credits" means remuneration paid for

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employment by an employer to an individual. Wage credits may not exceed four thousand eight hundred ten dollars (\$4,810) and may not include payments specified in section 2(b) of this chapter.

(e) For calendar quarters beginning on and after July 1, 1995, and before July 1, 1997, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand dollars (\$5,000) and may not include payments specified in section 2(b) of this chapter.

(f) For calendar quarters beginning on and after July 1, 1997, and before July 1, 1998, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand four hundred dollars (\$5,400) and may not include payments specified in section 2(b) of this chapter.

(g) For calendar quarters beginning on and after July 1, 1998, and before July 1, 1999, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand six hundred dollars (\$5,600) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(h) For calendar quarters beginning on and after July 1, 1999, and before July 1, 2000, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand eight hundred dollars (\$5,800) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(i) For calendar quarters beginning on and after July 1, 2000, and before July 1, 2001, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed six thousand seven hundred dollars (\$6,700) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(j) For calendar quarters beginning on and after July 1, 2001, and

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1 before July 1, 2002, "wage credits" means remuneration paid for
 2 employment by an employer to an individual and remuneration
 3 received as tips or gratuities in accordance with Sections 3102 and
 4 3301 et seq. of the Internal Revenue Code. Wage credits may not
 5 exceed seven thousand three hundred dollars (\$7,300) and may not
 6 include payments that are excluded from the definition of wages under
 7 section 2(b) of this chapter.

8 (k) For calendar quarters beginning on and after July 1, 2002, and
 9 before July 1, 2003, "wage credits" means remuneration paid for
 10 employment by an employer to an individual and remuneration
 11 received as tips or gratuities in accordance with Sections 3102 and
 12 3301 et seq. of the Internal Revenue Code. Wage credits may not
 13 exceed seven thousand nine hundred dollars (\$7,900) and may not
 14 include payments that are excluded from the definition of wages under
 15 section 2(b) of this chapter.

16 (l) For calendar quarters beginning on and after July 1, 2003, and
 17 before July 1, 2004, "wage credits" means remuneration paid for
 18 employment by an employer to an individual and remuneration
 19 received as tips or gratuities in accordance with Sections 3102 and
 20 3301 et seq. of the Internal Revenue Code. Wage credits may not
 21 exceed eight thousand two hundred sixteen dollars (\$8,216) and may
 22 not include payments that are excluded from the definition of wages
 23 under section 2(b) of this chapter.

24 (m) For calendar quarters beginning on and after July 1, 2004, and
 25 before July 1, 2005, "wage credits" means remuneration paid for
 26 employment by an employer to an individual and remuneration
 27 received as tips or gratuities in accordance with Sections 3102 and
 28 3301 et seq. of the Internal Revenue Code. Wage credits may not
 29 exceed eight thousand seven hundred thirty-three dollars (\$8,733) and
 30 may not include payments that are excluded from the definition of
 31 wages under section 2(b) of this chapter.

32 (n) (a) For calendar quarters beginning on and after July 1, 2005,
 33 **and before January 1, 2010**, "wage credits" means remuneration paid
 34 for employment by an employer to an individual and remuneration
 35 received as tips or gratuities in accordance with Sections 3102 and
 36 3301 et seq. of the Internal Revenue Code. Wage credits may not
 37 exceed nine thousand two hundred fifty dollars (\$9,250) and may not
 38 include payments that are excluded from the definition of wages under
 39 section 2(b) of this chapter.

40 (b) For calendar quarters beginning on and after January 1,
 41 **2010**, "wage credits" means remuneration paid for employment by
 42 an employer to an individual and remuneration received as tips or

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1 **gratuities in accordance with Sections 3102 and 3301 et seq. of the**
 2 **Internal Revenue Code. Wage credits may not exceed eleven**
 3 **thousand dollars (\$11,000) and may not include payments that are**
 4 **excluded from the definition of wages under section 2(b) of this**
 5 **chapter.**

6 SECTION 9. IC 22-4-5-1, AS AMENDED BY P.L.138-2008,
 7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2009]: Sec. 1. (a) "Deductible income" wherever used in this
 9 article, means income deductible from the weekly benefit amount of an
 10 individual in any week, and shall include, but shall not be limited to:

11 (1) remuneration for services from employing units, whether or
 12 not such remuneration is subject to contribution under this article;
 13 **except as provided in subsection (c);**

14 (2) dismissal pay;

15 (3) vacation pay;

16 (4) pay for idle time;

17 (5) holiday pay;

18 (6) sick pay;

19 (7) traveling expenses granted to an individual by an employing
 20 unit and not fully accounted for by such individual;

21 (8) net earnings from self-employment;

22 (9) payments in lieu of compensation for services;

23 (10) awards by the National Labor Relations Board of additional
 24 pay, back pay, or for loss of employment, or any such payments
 25 made under an agreement entered into by an employer, a union,
 26 and the National Labor Relations Board;

27 (11) payments made to an individual by an employing unit
 28 pursuant to the terms of the Fair Labor Standards Act (Federal
 29 Wage and Hour Law, 29 U.S.C. 201 et seq.);

30 (12) **for a week in which a payment is actually received by an**
 31 **individual;** payments made by an employer to an individual who
 32 accepts an offer from the employer in connection with a layoff or
 33 a plant closure; or

34 ~~(13) except as provided in subsection (c)(2); the part of a payment~~
 35 ~~made by an employer to an individual who accepts an offer from~~
 36 ~~the employer in connection with a layoff or a plant closure if that~~
 37 ~~part is attributable to a week and the week:~~

38 (A) occurs after an individual receives the payment; and

39 (B) was used under the terms of a written agreement to
 40 compute the payment.

41 **(13) supplemental unemployment insurance benefits made**
 42 **under a valid negotiated contract or agreement.**

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(b) Deductible income shall not include the first three dollars (\$3), or twenty percent (20%) of the claimant's weekly benefit amount rounded to the next lowest dollar, whichever is the larger, of remuneration paid or payable to an individual with respect to any week by other than the individual's base period employer or employers.

(c) For the purpose of deductible income only; remuneration for services from employing units does not include:

(1) bonuses, gifts, or prizes awarded to an employee by an employing unit; or

(2) compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure; without regard to how the compensation is characterized by the contract or agreement.

(d) Deductible income does not include a supplemental unemployment insurance benefit made under a valid negotiated contract or agreement.

SECTION 10. IC 22-4-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Payments in lieu of a vacation awarded to an employee by an employing unit shall be considered as deductible income in and with respect to the week in which the same is actually paid. The payment of accrued vacation pay, dismissal pay, or severance pay to an individual separated from employment by an employing unit shall be allocated to the period of time for which such payment is made immediately following the date of separation, and an individual receiving such payments shall not be deemed unemployed with respect to a week during which such allocated deductible income equals or exceeds the weekly benefit amount of his the individual's claim. Pay for idle time; sick pay; traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual; earnings from self-employment; awards by the National Labor Relations Board of additional pay, back pay, or for loss of employment; or any such payments made under an agreement entered into by an employer, a union, and the National Labor Relations Board; and payments to an employee by an employing unit made pursuant to the terms and provisions of the Fair Labor Standards Act shall be deemed to constitute deductible income with respect to the week or weeks for which such payments are made. However, if such payments made pursuant to the provisions of the National Labor Relations Act or of the Fair Labor Standards Act or through agreement with a union are not, by the terms of the order or agreement under which said payments are made, allocated to any designated week or weeks, then, and in such

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cases, such payments shall be considered as deductible income in and with respect to the week in which the same is actually paid.

(b) Holiday pay which is paid not later than the normal pay day for the pay period in which the holiday occurred shall be deemed to constitute deductible income with respect to the week for which such payments are made. Holiday pay which is paid after the normal pay day for the pay period in which the holiday occurred shall be considered as deductible income in and with respect to the week in which the same is actually paid.

(c) ~~Payment of vacation pay, if made prior to the vacation period or not later than the normal pay day for the pay period in which the vacation was taken, shall be deemed deductible income with respect to the week or weeks falling within such vacation period for which vacation payment is made. Payment of vacation pay made subsequent to the normal pay day for the pay period in which the vacation was taken shall be deemed deductible income with respect to the week in which such payment is made.~~

SECTION 11. IC 22-4-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) "Employing unit" means any individual or type of organization, including any partnership, **limited liability partnership**, association, trust, joint venture, estate, **limited liability company**, joint stock company, insurance company, corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor to any of the foregoing, or the legal representative of a deceased person, which at any time has had one (1) or more individuals performing services for it within this state for remuneration or under any contract of hire, written or oral, expressed or implied. Where any such individual performing services hires a helper to assist in performing such services, each such helper shall be deemed to be performing services for such employing unit for all purposes of this article, whether such helper was hired or paid directly by the employing unit or by the individual, provided the employing unit has actual or constructive knowledge of the services.

(b) All such individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all purposes of this article.

SECTION 12. IC 22-4-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) If two (2) or more related **entities, including partnerships, limited liability partnerships, associations, trusts, joint ventures, estates, joint stock**

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1 **companies, limited liability companies, insurance companies, or**
 2 **corporations, or a combination of these entities,** concurrently employ
 3 the same individual and compensate that individual through a common
 4 paymaster that is one (1) of the ~~corporations;~~ **entities,** those
 5 ~~corporations~~ **entities** shall be considered to be one (1) employing unit.

6 (b) For purposes of this section, ~~corporations~~ **entities** shall be
 7 considered related ~~corporations~~ **entities** if they satisfy any one (1) of
 8 the following tests at any time during the calendar quarter:

9 (1) The corporations are members of a "controlled group of
 10 corporations", as defined in Section 1563 of the Internal Revenue
 11 Code (generally parent-subsidiary or brother-sister controlled
 12 groups), or would be members if Section 1563(a)(4) and 1563(b)
 13 of the Internal Revenue Code did not apply and if the phrase
 14 "more than fifty percent (50%)" were substituted for the phrase
 15 "at least eighty percent (80%)" wherever it appears in Section
 16 1563(a) of the Internal Revenue Code.

17 (2) In the case of a ~~corporation~~ **an entity** that does not issue stock,
 18 either fifty percent (50%) or more of the members of one (1)
 19 ~~corporation's entity's~~ board of directors (or other governing body)
 20 are members of the other ~~corporation's entity's~~ board of directors
 21 (or other governing body), or the holders of fifty percent (50%) or
 22 more of the voting power to select ~~such~~ **these** members are
 23 concurrently the holders of fifty percent (50%) or more of that
 24 power with respect to the other ~~corporation:~~ **entity.**

25 (3) Fifty percent (50%) or more of one (1) ~~corporation's entity's~~
 26 officers are concurrently officers of the other ~~corporation:~~ **entity.**

27 (4) Thirty percent (30%) or more of one (1) ~~corporation's entity's~~
 28 employees are concurrently employees of the other ~~corporation:~~
 29 **entity.**

30 (5) **The entities are part of an affiliated group, as defined in**
 31 **Section 1504 of the Internal Revenue Code, except that the**
 32 **ownership percentage in Section 1504(a)(2) of the Internal**
 33 **Revenue Code shall be determined using fifty percent (50%)**
 34 **instead of eighty percent (80%).**

35 ~~Corporations~~ **Entities** shall be considered related ~~corporations~~ **entities**
 36 for an entire calendar quarter if they satisfy the requirements of this
 37 subsection at any time during the calendar quarter.

38 (c) For purposes of this section, "concurrent employment" means the
 39 contemporaneous existence of an employment relationship between an
 40 individual and two (2) or more ~~corporations:~~ **entities.**

41 SECTION 13. IC 22-4-7-3 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) As used in this

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1 article, "seasonal employer" means an employer that, because of
 2 climatic conditions or the seasonal nature of a product or service,
 3 customarily operates all or a portion of its business only during a
 4 regularly recurring period or periods of less than ~~twenty-six (26)~~
 5 **forty-two (42)** weeks for all seasonal periods during a calendar year.
 6 ~~An employer may be a seasonal employer with respect to a portion of~~
 7 ~~its business only if that portion, under the usual and customary practice~~
 8 ~~in the industry, is identifiable as a functionally distinct operation.~~

9 (b) As used in this article, "seasonal determination" means a
 10 decision made by the department after application on prescribed forms
 11 as to the seasonal nature of the employer, the normal seasonal period
 12 or periods of the employer, and the seasonal operation of the employer
 13 covered by such determination.

14 (c) As used in this article, "seasonal operation" means the part
 15 of an employer's workforce that is laid off on a regular or annual
 16 basis.

17 (d) As used in this article, "seasonal period" means the period
 18 or periods during which a seasonal employer regularly operates its
 19 seasonal operation.

20 (e) As used in this article, "seasonal event" means:

- 21 (1) any regularly occurring climatic condition that requires an
- 22 employer to temporarily cease operations;
- 23 (2) any regularly scheduled cessation of operations, if the date
- 24 and duration of the cessation can be predicted with
- 25 reasonable certainty; or
- 26 (3) any event that regularly and predictably causes the
- 27 cessation of operations.

28 SECTION 14. IC 22-4-8-1, AS AMENDED BY P.L.108-2006,
 29 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2009]: Sec. 1. (a) "Employment," subject to the other
 31 provisions of this section, means service, including service in interstate
 32 commerce performed for remuneration or under any contract of hire,
 33 written or oral, expressed or implied.

34 (b) Services performed by an individual for remuneration shall be
 35 deemed to be employment subject to this article irrespective of whether
 36 the common-law relationship of master and servant exists, unless and
 37 until all the following conditions are shown to the satisfaction of the
 38 department:

- 39 (1) The individual has been and will continue to be free from
- 40 control and direction in connection with the performance of such
- 41 service, both under the individual's contract of service and in fact.
- 42 (2) The service is performed outside the usual course of the

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business for which the service is performed.

(3) The individual:

(A) is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed; or

(B) is a sales agent who receives remuneration solely upon a commission basis and who is the master of the individual's own time and effort.

(c) The term also includes the following:

(1) Services performed for remuneration by:

(A) an officer of a corporation in the officer's official corporate capacity; or

(B) a chief executive of a noncorporate entity, including any partnership, limited liability partnership, association, trust, joint venture, estate, limited liability company, joint stock company, or insurance company, in the executive's official capacity for the entity.

(2) Services performed for remuneration for any employing unit by an individual:

(A) as an agent-driver or commission-driver engaged in distributing products, including but not limited to, meat, vegetables, fruit, bakery, beverages, or laundry or dry-cleaning services for the individual's principal; or

(B) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, the individual's principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(d) For purposes of subsection (c)(2), the term "employment" shall include services described in subsection (c)(2)(A) and (c)(2)(B) only if all the following conditions are met:

(1) The contract of service contemplates that substantially all of the services are to be performed personally by such individual.

(2) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation).

(3) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

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1 SECTION 15. IC 22-4-8-2, AS AMENDED BY P.L.3-2008,
 2 SECTION 158, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2009]: Sec. 2. The term "employment" shall
 4 include:

5 (a) An individual's entire service performed within or both within
 6 and without Indiana if the service is localized in Indiana.

7 (b) An individual's entire service performed within or both within
 8 and without Indiana if the service is not localized in any state, but some
 9 of the service is performed in Indiana and:

10 (1) the base of operations, or, if there is no base of operations,
 11 then the place from which such service is directed or controlled
 12 is in Indiana;

13 (2) the base of operations or place from which such service is
 14 directed or controlled is not in any state in which some part of the
 15 service is performed but the individual's residence is in Indiana;
 16 or

17 (3) such service is not covered under the unemployment
 18 compensation law of any other state or Canada, and the place
 19 from which the service is directed or controlled is in Indiana.

20 (c) Services not covered under subsections (a) and (b) and
 21 performed entirely without Indiana, with respect to no part of which
 22 contributions are required and paid under an unemployment
 23 compensation law of any other state or of the United States, shall be
 24 deemed to be employment subject to this article if the department
 25 approves the election of the individual performing such services and
 26 the employing unit for which such services are performed, that the
 27 entire services of such individual shall be deemed to be employment
 28 subject to this article.

29 (d) Services covered by an election duly approved by the
 30 department, in accordance with an agreement pursuant to IC 22-4-22-1
 31 through IC 22-4-22-5, shall be deemed to be employment during the
 32 effective period of such election.

33 (e) Service shall be deemed to be localized within a state if:

34 (1) the service is performed entirely within such state; or

35 (2) the service is performed both within and without such state,
 36 but the service performed without such state is incidental to the
 37 individual's service within the state, such as is temporary or
 38 transitory in nature or consists of isolated transactions.

39 (f) Periods of vacation with pay or leave with pay, other than
 40 military leave granted or given to an individual by an employer.

41 (g) Notwithstanding any other provisions of this article, the term
 42 employment shall also include all services performed by an officer or

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1 member of the crew of an American vessel or American aircraft, on or
 2 in connection with such vessel or such aircraft, provided that the
 3 operating office, from which the operations of such vessel operating on
 4 navigable waters within or the operations of such aircraft within, or the
 5 operation of such vessel or aircraft within and without the United States
 6 are ordinarily and regularly supervised, managed, directed, and
 7 controlled, is within this state.

8 (h) Services performed for an employer which is subject to
 9 contribution solely by reason of liability for any federal tax against
 10 which credit may be taken for contributions paid into a state
 11 unemployment compensation fund.

12 (i) The following:

13 (1) Service performed after December 31, 1971, by an individual
 14 in the employ of this state or any of its instrumentalities (or in the
 15 employ of this state and one (1) or more other states or their
 16 instrumentalities) for a hospital or eligible postsecondary
 17 educational institution located in Indiana.

18 (2) Service performed after December 31, 1977, by an individual
 19 in the employ of this state or a political subdivision of the state or
 20 any instrumentality of the state or a political subdivision, or any
 21 instrumentality which is wholly owned by the state and one (1) or
 22 more other states or political subdivisions, if the service is
 23 excluded from "employment" as defined in Section 3306(c)(7) of
 24 the Federal Unemployment Tax Act (26 U.S.C. 3306(c)(7)).
 25 However, service performed after December 31, 1977, as the
 26 following is excluded:

27 (A) An elected official.

28 (B) A member of a legislative body or of the judiciary of a
 29 state or political subdivision.

30 (C) A member of the state national guard or air national guard.

31 (D) An employee serving on a temporary basis in the case of
 32 fire, snow, storm, earthquake, flood, or similar emergency.

33 (E) An individual in a position which, under the laws of the
 34 state, is designated as:

35 (i) a major nontenured policymaking or advisory position; or

36 (ii) a policymaking or advisory position the performance of
 37 the duties of which ordinarily does not require more than
 38 eight (8) hours per week.

39 (3) Service performed after March 31, 1981, by an individual
 40 whose service is part of an unemployment work relief or work
 41 training program assisted or financed in whole by any federal
 42 agency or an agency of this state or a political subdivision of this

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state, by an individual receiving such work relief or work training is excluded.

(j) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met:

(1) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act (26 U.S.C. 3306(c)(8)).

(2) The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(3) For the purposes of subdivisions (1) and (2), the term "employment" does not apply to service performed as follows:

(A) In the employ of:

(i) a church or convention or association of churches; or

(ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

(B) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(C) Before January 1, 1978, in the employ of a school which is not an eligible postsecondary educational institution.

(D) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work.

(E) As part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.

(k) The service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subsection (a), (b), or (e) or the parallel provisions of another state's

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law), if **the following apply:**

(1) The employer's principal place of business in the United States is located in this state. ~~or~~

(2) The employer has no place of business in the United States, but **the employer is:**

(A) ~~The employer~~ is an individual who is a resident of this state; ~~or~~

(B) ~~The employer~~ is a corporation which is organized under the laws of this state; ~~or~~

(C) ~~The employer~~ is a partnership, **limited liability partnership**, or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state; or

(D) an association, a joint venture, an estate, a limited liability company, a joint stock company, or an insurance company (referred to as an "entity" in this clause), and either:

(i) the entity is organized under the laws of this state; or

(ii) the number of owners, members, or beneficiaries who are residents of this state is greater than the number who are residents of any one (1) other state.

(3) None of the criteria of subdivisions (1) and (2) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(4) An "American employer," for purposes of this subsection, means:

(A) an individual who is a resident of the United States; ~~or~~

(B) a partnership **or limited liability partnership**, if two-thirds (2/3) or more of the partners are residents of the United States; ~~or~~

(C) a trust, if all of the trustees are residents of the United States; or

(D) a corporation, **an association, a joint venture, an estate, a limited liability company, a joint stock company, or an insurance company** organized **or established** under the laws of the United States or of any state.

(l) The term "employment" also includes the following:

(1) Service performed after December 31, 1977, by an individual in agricultural labor (as defined in section 3(c) of this chapter) when the service is performed for an employing unit which:

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- 1 (A) during any calendar quarter in either the current or
 2 preceding calendar year paid cash remuneration of twenty
 3 thousand dollars (\$20,000) or more to individuals employed in
 4 agricultural labor; or
 5 (B) for some portion of a day in each of twenty (20) different
 6 calendar weeks, whether or not the weeks were consecutive, in
 7 either the current or the preceding calendar year, employed in
 8 agricultural labor ten (10) or more individuals, regardless of
 9 whether they were employed at the same time.
- 10 (2) For the purposes of this subsection, any individual who is a
 11 member of a crew furnished by a crew leader to perform service
 12 in agricultural labor for any other person shall be treated as an
 13 employee of the crew leader:
- 14 (A) if the crew leader holds a valid certificate of registration
 15 under the Farm Labor Contractor Registration Act of 1963, or
 16 substantially all the members of the crew operate or maintain
 17 tractors, mechanized harvesting or crop dusting equipment, or
 18 any other mechanized equipment, which is provided by the
 19 crew leader; and
 20 (B) if the individual is not an employee of another person
 21 within the meaning of section 1 of this chapter.
- 22 (3) For the purposes of subdivision (1), in the case of an
 23 individual who is furnished by a crew leader to perform service
 24 in agricultural labor for any other person and who is not treated as
 25 an employee of the crew leader under subdivision (2):
- 26 (A) the other person and not the crew leader shall be treated as
 27 the employer of the individual; and
 28 (B) the other person shall be treated as having paid cash
 29 remuneration to the individual in an amount equal to the
 30 amount of cash remuneration paid to the individual by the
 31 crew leader (either on the individual's own behalf or on behalf
 32 of the other person) for the service in agricultural labor
 33 performed for the other person.
- 34 (4) For the purposes of this subsection, the term "crew leader"
 35 means an individual who:
- 36 (A) furnishes individuals to perform service in agricultural
 37 labor for any other person;
 38 (B) pays (either on the individual's own behalf or on behalf of
 39 the other person) the agricultural laborers furnished by the
 40 individual for the service in agricultural labor performed by
 41 them; and
 42 (C) has not entered into a written agreement with the other

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person under which the individual is designated as an employee of the other person.

(m) The term "employment" includes domestic service after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars (\$1,000) or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in the domestic service in any calendar quarter.

SECTION 16. IC 22-4-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) As used in this article, "seasonal employment" means services performed for a seasonal employer during the seasonal period in the employer's seasonal operations, after the effective date of a seasonal determination with respect to the seasonal employer.

(b) As used in this article, "seasonal worker" means an individual who:

- (1) has been employed by a seasonal employer in seasonal employment; ~~during a regularly recurring period or periods of less than twenty-six (26) weeks in a calendar year for all seasonal periods; as determined by the department;~~
- (2) has been hired for a specific temporary seasonal period as determined by the department; ~~and~~
- (3) has been notified in writing: ~~at the time hired; or immediately following the seasonal determination by the department; whichever is later;~~

(A) that the individual is performing services in seasonal employment for a seasonal employer; and

(B) that the individual's employment is limited to the beginning and ending dates of the employer's seasonal period as determined by the department; ~~and~~

(4) received the written notice required by subdivision (3) before the latest of the following dates:

(A) The date the seasonal worker was hired.

(B) The tenth day following the date of a seasonal determination by the department.

(C) The date that is six (6) months before the end of a seasonal period.

SECTION 17. IC 22-4-10-3, AS AMENDED BY P.L.108-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. Except as provided in section 1(b) through 1(e) of this chapter, each employer shall pay contributions equal to five and

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1 six-tenths percent (5.6%) of wages, except as otherwise provided in
 2 IC 22-4-11-2, IC 22-4-11-3, **IC 22-4-11-3.5**, IC 22-4-11.5, and
 3 IC 22-4-37-3.

4 SECTION 18. IC 22-4-10-4.5 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE UPON PASSAGE]: **Sec. 4.5. (a) This section applies to**
 7 **an employer:**

8 (1) that is subject to this article for wages paid during
 9 calendar year 2009; and

10 (2) whose contribution rate for calendar year 2009 was
 11 determined under this chapter, IC 22-4-11, IC 22-4-11.5, or
 12 IC 22-4-37-3.

13 (b) In addition to the contributions determined under this
 14 chapter or IC 22-4-11.5, each employer shall pay an unemployment
 15 insurance surcharge that is equal to:

16 (1) ten percent (10%) of the employer's applicable rate for
 17 calendar year 2009 as determined under this chapter,
 18 IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3; multiplied by

19 (2) the employer's taxable wages for calendar year 2009.

20 (c) The unemployment insurance surcharge computed under
 21 subsection (b) is payable to the department in two (2) equal
 22 installments as follows:

23 (1) The first installment is payable not later than the last
 24 business day of the second calendar quarter of 2009.

25 (2) The second installment is payable not later than the last
 26 business day of the third calendar quarter of 2009.

27 (d) The department shall deposit the amounts received under
 28 this section in the unemployment insurance benefit fund
 29 established under IC 22-4-26.

30 (e) The amounts paid under this section do not affect and may
 31 not be charged to the experience account of any employer.

32 (f) This section expires on January 1, 2010.

33 SECTION 19. IC 22-4-10-8 IS ADDED TO THE INDIANA CODE
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 35 1, 2009]: **Sec. 8. (a) This section applies to an employer:**

36 (1) that is subject to this article for wages paid after 2009;

37 (2) whose contribution rate for a calendar year was
 38 determined under this chapter, IC 22-4-11, IC 22-4-11.5, or
 39 IC 22-4-37-3;

40 (3) whose contributions paid for that calendar year are less
 41 than benefits charged to the employer's experience account
 42 for that calendar year; and

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(4) for whom the department makes a determination under subsection (b) for that calendar year.

(b) If the department determines, for a calendar year described in subsection (a)(3), that:

(1) for all or a part of an employer's operations, the employer:

(A) was a seasonal employer (as defined in IC 22-4-7-3(a)); and

(B) did not apply for a seasonal determination under IC 22-4-14-11; or

(2) in any of the three (3) calendar years immediately preceding the calendar year described in subsection (a)(3), the annual payroll reported by the employer to the department declined by less than ten percent (10%), as compared with the annual payroll reported by the employer for the prior calendar year;

then, in addition to the contributions determined under this chapter or IC 22-4-11.5, each employer to which this section applies shall pay for the calendar year a seasonal employment surcharge that is computed under subsection (c).

(c) The seasonal employment surcharge is equal to:

(1) the result of:

(A) the employer's benefits charged to the employer's experience account for the calendar year described in subsection (a); minus

(B) the employer's contributions for the calendar year described in subsection (a); multiplied by

(2) the following percentage:

(A) Eighty percent (80%), after the first department determination under subsection (b).

(B) Ninety percent (90%), after the second department determination under subsection (b).

(C) One hundred percent (100%), after the third and each subsequent department determination under subsection (b).

(d) The seasonal employment surcharge computed under subsection (c) is payable to the department not later than the last business day of March of the following calendar year.

(e) The department shall deposit amounts received under this section in the unemployment insurance benefit fund established under IC 22-4-26.

(f) The amounts paid under this section shall be credited to the experience account of the employer that pays the surcharge.

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SECTION 20. IC 22-4-11-2, AS AMENDED BY P.L.108-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as provided in IC 22-4-11.5, the department shall for each year determine the contribution rate applicable to each employer.

(b) The balance shall include contributions with respect to the period ending on the computation date and actually paid on or before July 31 immediately following the computation date and benefits actually paid on or before the computation date and shall also include any voluntary payments made in accordance with IC 22-4-10-5:

(1) for each calendar year, an employer's rate shall be determined in accordance with the rate schedules in section ~~3 or 3.3~~ **or 3.5** of this chapter; and

(2) for each calendar year, an employer's rate shall be two and seven-tenths percent (2.7%), except as otherwise provided in IC 22-4-37-3, unless and until:

(A) the employer has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date; and

(B) there has been some annual payroll in each of the three (3) twelve (12) month periods immediately preceding the computation date.

(c) **This subsection applies before January 1, 2010.** In addition to the conditions and requirements set forth and provided in subsection (b)(2)(A) and (b)(2)(B), an employer's rate shall not be less than five and six-tenths percent (5.6%) unless all required contribution and wage reports have been filed within thirty-one (31) days following the computation date and all contributions, penalties, and interest due and owing by the employer or the employer's predecessors for periods prior to and including the computation date have been paid:

(1) within thirty-one (31) days following the computation date; or

(2) within ten (10) days after the department has given the employer a written notice by registered mail to the employer's last known address of:

(A) the delinquency; or

(B) failure to file the reports;

whichever is the later date.

The board or the board's designee may waive the imposition of rates under this subsection if the board finds the employer's failure to meet the deadlines was for excusable cause. The department shall give written notice to the employer before this additional condition or requirement shall apply.

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(d) This subsection applies after December 31, 2009. In addition to the conditions and requirements set forth and provided in subsection (b)(2)(A) and (b)(2)(B), an employer's rate shall not be less than the applicable rate shown in subsection (e) unless all required contributions and wage reports have been filed within thirty-one (31) days following the computation date and all contributions, penalties, and interest due and owing by the employer or the employer's predecessor for periods before and including the computation date have been paid:

(1) within thirty-one (31) days following the computation date; or

(2) within ten (10) days after the department has given the employer a written notice by registered mail to the employer's last known address of:

(A) the delinquency; or

(B) failure to file the reports;

whichever is the later date.

The board or the board's designee may waive the imposition of rates under this subsection and subsection (e) if the board finds the employer's failure to meet the deadlines was for excusable cause. The department shall give written notice to the employer before this additional condition or requirement shall apply.

(e) For an employer described in subsection (d), the employer's applicable rate for a calendar year is equal to the rate shown on the following chart on the line opposite the applicable schedule A through E as determined in section 3 of this chapter for the calendar year:

Applicable Schedule	Employer Rate
A	8.2%
B	8.1%
C	8.0%
D	6.0%
E	5.4%

~~(d)~~ (f) However, if the employer is the state or a political subdivision of the state or any instrumentality of a state or a political subdivision, or any instrumentality which is wholly owned by the state and one (1) or more other states or political subdivisions, the employer may contribute at a rate of one percent (1%) until it has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date.

~~(e)~~ (g) On the computation date every employer who had taxable wages in the previous calendar year shall have the employer's

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experience account charged with the amount determined under the following formula:

STEP ONE: Divide:

(A) the employer's taxable wages for the preceding calendar year; by

(B) the total taxable wages for the preceding calendar year.

STEP TWO: Multiply the quotient determined under STEP ONE by the total amount of benefits charged to the fund under section 1 of this chapter.

(h) One (1) percentage point of the rate imposed under subsection (c), **subsections (d) and (e)**, or the amount of the employer's payment that is attributable to the increase in the contribution rate, whichever is less, shall be imposed as a penalty that is due and shall be deposited upon collection into the special employment and training services fund established under IC 22-4-25-1. The remainder of the contributions paid by an employer pursuant to the maximum rate shall be:

(1) considered a contribution for the purposes of this article; and

(2) deposited in the unemployment insurance benefit fund established under IC 22-4-26.

SECTION 21. IC 22-4-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The applicable schedule of rates for ~~the calendar year 1983 and thereafter years~~ **before January 1, 2010**, shall be determined by the ratio resulting when the balance in the fund as of the determination date is divided by the total payroll of all subject employers for the immediately preceding calendar year. Schedule A, B, C, or D, appearing on the line opposite the fund ratio in the schedule below, shall be applicable in determining and assigning each employer's contribution rate for the calendar year immediately following the determination date. For the purposes of this subsection, "total payroll" means total remuneration reported by all contributing employers as required by this article and does not include the total payroll of any employer who elected to become liable for payments in lieu of contributions (as defined in IC 22-4-2-32). For the purposes of this subsection, "subject employers" means those employers who are subject to contribution.

FUND RATIO SCHEDULE

When the Fund Ratio Is:

As Much As	But Less Than	Applicable Schedule
	1.0%	A
1.0%	1.5%	B



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1 1.5% 2.25% C
 2 2.25% D

3 (b) For calendar years before 2002, if the conditions and
 4 requirements of section 2 of this chapter are met, the rate of
 5 contributions shall be determined and assigned, with respect to each
 6 calendar year, to employers whose accounts have a credit balance and
 7 who are eligible therefor according to each employer's credit reserve
 8 ratio. Each employer shall be assigned the contribution rate appearing
 9 in the applicable schedule A, B, C, or D on the line opposite his credit
 10 reserve ratio as set forth in the rate schedule below:

11 RATE SCHEDULE FOR ACCOUNTS
 12 WITH CREDIT BALANCES

13 When the Credit Reserve Ratio Is:

14	As	But	Rate Schedules				
15	Much	Less	(%)				
16	As	Than	A	B	C	D	E
17	3.0		1.2	0.2	0.2	0.2	0.15
18	2.8	3.0	1.4	0.4	0.2	0.2	0.15
19	2.6	2.8	1.6	0.6	0.2	0.2	0.15
20	2.4	2.6	1.8	0.8	0.4	0.2	0.2
21	2.2	2.4	2.0	1.0	0.6	0.2	0.2
22	2.0	2.2	2.2	1.2	0.8	0.4	0.4
23	1.8	2.0	2.4	1.4	1.0	0.6	0.6
24	1.6	1.8	2.6	1.6	1.2	0.8	0.8
25	1.4	1.6	2.8	1.8	1.4	1.0	1.0
26	1.2	1.4	3.0	2.0	1.6	1.2	1.2
27	1.0	1.2	3.2	2.2	1.8	1.4	1.4
28	0.8	1.0	3.4	2.4	2.0	1.6	1.6
29	0.6	0.8	3.6	2.6	2.2	1.8	1.8
30	0.4	0.6	3.8	2.8	2.4	2.0	2.0
31	0.2	0.4	4.0	3.0	2.6	2.2	2.2
32	0	0.2	4.2	3.2	2.8	2.4	2.4

33 (c) Each employer whose account as of any computation date
 34 occurring on and after June 30, 1984, shows a debit balance shall be
 35 assigned the rate of contributions appearing on the line opposite his
 36 debit ratio as set forth in the following rate schedule for accounts with
 37 debit balances:

38 RATE SCHEDULE FOR ACCOUNTS
 39 WITH DEBIT BALANCES

40 When the Debit Reserve Ratio Is:

41	As	But	Rate Schedules	
42	Much	Less	(%)	

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As	Thru	A	B	C	D	E
	1.5	4.5	4.4	4.3	4.2	3.6
1.5	3.0	4.8	4.7	4.6	4.5	3.8
3.0	4.5	5.1	5.0	4.9	4.8	4.1
4.5	6.0	5.4	5.3	5.2	5.1	4.4
6.0		5.7	5.6	5.5	5.4	5.4

(b) The applicable schedule of rates for calendar years after December 31, 2009, shall be determined by the ratio resulting when the balance in the fund as of the determination date is divided by the total payroll of all subject employers for the immediately preceding calendar year. Schedules A through E appearing on the line opposite the fund ratio in the schedule below shall be applicable in determining and assigning each employer's contribution rate for the calendar year immediately following the determination date. For purposes of this subsection, "total payroll" means total remuneration reported by all contributing employers as required by this article and does not include the total payroll of any employer who elected to become liable for payments in lieu of contributions (as defined in IC 22-4-2-32). For the purposes of this subsection, "subject employers" means those employers who are subject to contribution.

FUND RATIO SCHEDULE

When the Fund Ratio Is:

As Much As	But Less Than	Applicable Schedule
	0.5%	A
0.5%	1.0%	B
1.0%	1.5%	C
1.5%	2.0%	D
2.0%		E

(c) Any adjustment in the amount charged to any employer's experience account made subsequent to the assignment of rates of contributions for any calendar year shall not operate to alter the amount charged to the experience accounts of any other base-period employers.

SECTION 22. IC 22-4-11-3.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.3. (a) For calendar years after 2001 **and before 2010**, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a credit balance and who are eligible therefore according to each employer's credit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D,



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or E on the line opposite the employer's credit reserve ratio as set forth in the rate schedule below:

**RATE SCHEDULE FOR ACCOUNTS
WITH CREDIT BALANCES**

When the Credit Reserve Ratio Is:

	As Much	But Less Than	Rate Schedules (%)				
	As	Than	A	B	C	D	E
9	3.00		1.10	0.10	0.10	0.10	0.15
10	2.80	3.00	1.30	0.30	0.10	0.10	0.15
11	2.60	2.80	1.50	0.50	0.10	0.10	0.15
12	2.40	2.60	1.70	0.70	0.30	0.10	0.20
13	2.20	2.40	1.90	0.90	0.50	0.10	0.20
14	2.00	2.20	2.10	1.10	0.70	0.30	0.40
15	1.80	2.00	2.30	1.30	0.90	0.50	0.60
16	1.60	1.80	2.50	1.50	1.10	0.70	0.80
17	1.40	1.60	2.70	1.70	1.30	0.90	1.00
18	1.20	1.40	2.90	1.90	1.50	1.10	1.20
19	1.00	1.20	3.10	2.10	1.70	1.30	1.40
20	0.80	1.00	3.30	2.30	1.90	1.50	1.60
21	0.60	0.80	3.50	2.50	2.10	1.70	1.80
22	0.40	0.60	3.70	2.70	2.30	1.90	2.00
23	0.20	0.40	3.90	2.90	2.50	2.10	2.20
24	0.00	0.20	4.10	3.10	2.70	2.30	2.40

(b) For calendar years after 2001 **and before 2010**, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a debit balance and who are eligible therefore according to each employer's debit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, or E on the line opposite the employer's debit reserve ratio as set forth in the rate schedule below:

**RATE SCHEDULE FOR ACCOUNTS
WITH DEBIT BALANCES**

When the Debit Reserve Ratio Is:

	As Much	But Less Than	Rate Schedules (%)				
	As	Than	A	B	C	D	E
39		1.50	4.40	4.30	4.20	4.10	5.40
40	1.50	3.00	4.70	4.60	4.50	4.40	5.40
41	3.00	4.50	5.00	4.90	4.70	4.70	5.40
42	4.50	6.00	5.30	5.20	5.10	5.00	5.40



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6.00 5.60 5.50 5.40 5.40 5.40

SECTION 23. IC 22-4-11-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. (a) For calendar years after 2009, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a credit balance and who are eligible for the rate according to each employer's credit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A through E on the line opposite the employer's credit reserve ratio as set forth in the rate schedule below:**

**RATE SCHEDULE FOR ACCOUNTS
WITH CREDIT BALANCES**

When the Credit Reserve Ratio Is:

As Much	But Less Than	Rate Schedules (%)					
As	Than	A	B	C	D	E	
3.00		0.75	0.65	0.60	0.50	0.20	
2.80	3.00	1.05	1.10	0.85	0.65	0.35	
2.60	2.80	1.35	1.40	1.10	0.80	0.50	
2.40	2.60	1.65	1.70	1.35	0.95	0.65	
2.20	2.40	1.95	2.00	1.60	1.10	0.80	
2.00	2.20	2.25	2.30	1.85	1.25	0.95	
1.80	2.00	2.55	2.60	2.10	1.40	1.10	
1.60	1.80	2.85	2.90	2.35	1.55	1.25	
1.40	1.60	3.15	3.20	2.60	1.70	1.40	
1.20	1.40	3.45	3.50	2.85	1.85	1.55	
1.00	1.20	3.75	3.80	3.10	2.00	1.70	
0.80	1.00	4.05	4.10	3.35	2.15	1.85	
0.60	0.80	4.35	4.40	3.60	2.30	2.00	
0.40	0.60	4.65	4.70	3.85	2.45	2.15	
0.20	0.40	4.95	5.00	4.10	2.60	2.30	
0.00	0.20	5.25	5.30	4.35	2.75	2.45	

(b) For calendar years after 2009, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a debit balance and who are eligible for the rate according to each employer's debit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A through E on the line opposite the employer's debit reserve ratio as set forth in the rate schedule



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below:

**RATE SCHEDULE FOR ACCOUNTS
WITH DEBIT BALANCES**

When the Debit Reserve Ratio Is:

As Much	But Less	Rate Schedules				
As	Than	(%)				
A	B	C	D	E		
1.50	3.00	6.00	5.50	5.00	3.00	2.50
1.50	3.00	6.40	6.00	5.50	3.60	3.00
3.00	4.50	6.80	6.50	6.00	4.20	3.50
4.50	6.00	7.20	7.00	6.50	4.80	4.00
6.00	8.00	7.60	7.50	7.00	5.40	4.50
8.00		8.20	8.10	8.00	6.00	5.40

SECTION 24. IC 22-4-11.5-8, AS AMENDED BY P.L.108-2006, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) If the department determines that an employing unit or other person that is not an employer under IC 22-4-7 at the time of the acquisition has acquired an employer's trade or business solely or primarily for the purpose of obtaining a lower employer contribution rate, the employing unit or other person:

(1) may not assume the experience account balance of the predecessor employer for the resources and liabilities of the predecessor employer's experience account that are attributable to the acquisition; and

(2) shall pay the applicable contribution rate as determined under this article.

(b) In determining whether an employing unit or other person acquired a trade or business solely or primarily for the purpose of obtaining a lower employer contribution rate under subsection (a), the department shall consider the following factors:

(1) The cost of acquiring the trade or business.

(2) Whether the employing unit or other person continued the business enterprise of the acquired trade or business, **including whether the predecessor employer is no longer performing the same trade or business and the trade or business is performed by the employing unit to whom the workforce is transferred. An employing unit is considered to continue the business enterprise if any one (1) of the following applies:**

(A) The predecessor employer and the employing unit are corporations that are members of a "controlled group of corporations", as defined in Section 1563 of the Internal Revenue Code (generally parent-subsidiary or

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brother-sister controlled groups), or would be members if Section 1563(a)(4) and 1563(b) of the Internal Revenue Code did not apply and if the phrase "more than fifty percent (50%)" were substituted for the phrase "at least eighty percent (80%)" wherever it appears in Section 1563(a) of the Internal Revenue Code.

(B) The predecessor employer and the employing unit are entities that are part of an affiliated group, as defined in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%).

(C) A predecessor employer and an employing unit are entities that do not issue stock, either fifty percent (50%) or more of the members of one (1) entity's board of directors (or other governing body) are members of the other entity's board of directors (or other governing body), or the holders of fifty percent (50%) or more of the voting power to select these members are concurrently the holders of fifty percent (50%) or more of that power with respect to the other entity.

(D) Fifty percent (50%) or more of one (1) entity's officers are concurrently officers of the other entity.

(E) Thirty percent (30%) or more of one (1) entity's employees are concurrently employees of the other entity.

(3) The length of time the employing unit or other person continued the business enterprise of the acquired trade or business.

(4) Whether a substantial number of new employees were hired to perform duties unrelated to the business enterprise that the trade or business conducted before the trade or business was acquired.

(5) Whether the predecessor employer and the employing unit are united by factors of control, operation, or use.

(6) Whether a new employing unit is being created solely to obtain a lower contribution rate.

(c) Any written determination made by the department is conclusive and binding on the employing unit or other person, unless the employing unit or other person files a written protest with the department setting forth all reasons for the protest. A protest under this section must be filed not later than fifteen (15) days after the date the department sends the initial determination to the employing unit or

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other person. The protest shall be heard and determined under this section and IC 22-4-32-1 through IC 22-4-32-15. The department and the employing unit or other person shall be parties to the hearing before the liability administrative law judge and are entitled to receive copies of all pleadings and the decision.

SECTION 25. IC 22-4-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) ~~With respect to initial claims filed for any week beginning on and after July 6, 1980; and before July 7, 1985; each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week; if properly claimed; benefits at the rate of four and three-tenths percent (4.3%) of the individual's wage credits in the calendar quarter during the individual's base period in which the wage credits were highest. However, the weekly benefit amount may not exceed:~~

- (1) eighty-four dollars (\$84) if the eligible and qualified individual has no dependents;
- (2) ninety-nine dollars (\$99) if the eligible and qualified individual has one (1) dependent;
- (3) one hundred thirteen dollars (\$113) if the eligible and qualified individual has two (2) dependents;
- (4) one hundred twenty-eight dollars (\$128) if the eligible and qualified individual has three (3) dependents; or
- (5) one hundred forty-one dollars (\$141) if the eligible and qualified individual has four (4) or more dependents.

With respect to initial claims filed for any week beginning on and after July 7, 1985; and before July 6, 1986; each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week; if properly claimed; benefits at the rate of four and three-tenths percent (4.3%) of the individual's wage credits in the calendar quarter during the individual's base period in which the wage credits were highest. However, the weekly benefit amount may not exceed:

- (1) ninety dollars (\$90) if the eligible and qualified individual has no dependents;
- (2) one hundred six dollars (\$106) if the eligible and qualified individual has one (1) dependent;
- (3) one hundred twenty-one dollars (\$121) if the eligible and qualified individual has two (2) dependents;
- (4) one hundred thirty-seven dollars (\$137) if the eligible and qualified individual has three (3) dependents; or
- (5) one hundred fifty-one dollars (\$151) if the eligible and

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qualified individual has four (4) or more dependents.

With respect to initial claims filed for any week beginning on and after July 6, 1986, and before July 7, 1991, each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week, if properly claimed; benefits at the rate of four and three-tenths percent (4.3%) of the individual's wage credits in the calendar quarter during the individual's base period in which the wage credits were highest. However, the weekly benefit amount may not exceed:

(1) ninety-six dollars (\$96) if the eligible and qualified individual has no dependents;

(2) one hundred thirteen dollars (\$113) if the eligible and qualified individual has one (1) dependent;

(3) one hundred twenty-nine dollars (\$129) if the eligible and qualified individual has two (2) dependents;

(4) one hundred forty-seven dollars (\$147) if the eligible and qualified individual has three (3) dependents; or

(5) one hundred sixty-one dollars (\$161) if the eligible and qualified individual has four (4) or more dependents.

With respect to initial claims filed for any week beginning on and after July 7, 1991, benefits shall be paid in accordance with subsections (d) through (k):

For the purpose of this subsection and subsections (e) through (g), the term "dependent" means lawful husband or wife; natural child; adopted child; stepchild; if such stepchild is not receiving aid to dependent children under the welfare program; or child placed in the claimant's home for adoption by an authorized placement agency or a court of law, provided such child is under eighteen (18) years of age and that such dependent claimed has received more than one-half (1/2) the cost of support from the claimant during ninety (90) days (or for duration of relationship, if less) immediately preceding the claimant's benefit year beginning date, but only if such dependent who is the lawful husband or wife is unemployed and currently ineligible for Indiana benefits because of insufficient base period wages. The number and status of dependents shall be determined as of the beginning of the claimant's benefit period and shall not be changed during that benefit period.

With respect to initial claims filed for any week beginning on and after July 6, 1980, the term "dependent" shall include a person with a disability over eighteen (18) years of age who is a child of the claimant and who receives more than one-half (1/2) the cost of his support from the claimant during the ninety (90) day period immediately preceding

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the claimant's benefit year beginning date. "Child" includes a natural child; an adopted child; a stepchild of claimant; if the stepchild is not receiving aid to dependent children under the welfare program; or a child placed in the claimant's home for adoption by an authorized placement agency or a court of law. The term "disabled" means an individual who by reason of physical or mental defect or infirmity; whether congenital or acquired by accident, injury, or disease; is totally or partially prevented from achieving the fullest attainable physical, social, economic, mental, and vocational participation in the normal process of living.

For the purpose of this subsection, the term "dependent" includes a child for whom claimant is the court appointed legal guardian.

On and after July 6, 1980; and before July 7, 1991, if the weekly benefit amount is less than forty dollars (\$40); the board, through the commissioner, shall pay benefits at the rate of forty dollars (\$40) per week. On and after July 7, 1991, if the weekly benefit amount is less than fifty dollars (\$50); the board, through the commissioner, shall pay benefits at the rate of fifty dollars (\$50) per week. If such weekly benefit amount is not a multiple of one dollar (\$1); it shall be computed to the next lower multiple of one dollar (\$1).

(b) Each eligible individual who is partially or part-totally unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his the individual's weekly benefit amount, less his the individual's deductible income, if any, for such week. If such partial benefit is not a multiple of one dollar (\$1), it shall be computed to the next lower multiple of one dollar (\$1). Except for an individual who is totally unemployed, an individual who is not partially or part-totally unemployed is not eligible for any benefit. The board may prescribe rules governing the payment of such partial benefits, and may provide, with respect to individuals whose earnings cannot reasonably be computed on a weekly basis, that such benefits may be computed and paid on other than a weekly basis. However, such rules shall secure results reasonably equivalent to those provided in the analogous provisions of this section.

(c) (b) The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be an amount equal to the weekly benefit amount payable to the individual during the individual's applicable benefit period, prior to any reduction of such weekly benefit amount.

(d) With respect to initial claims filed for any week beginning on and after July 7, 1991, and before July 1, 1995, each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in

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the individual's benefit period shall be paid for the week, if properly claimed; benefits at the rate of:

(1) five percent (5%) of the first one thousand dollars (\$1,000) of the individual's wage credits in the calendar quarter during the individual's base period in which the wage credits were highest; and

(2) four percent (4%) of the individual's remaining wage credits in the calendar quarter during the individual's base period in which the wage credits were highest.

However, the weekly benefit amount may not exceed the amount specified in subsections (e) through (i):

(e) With respect to initial claims filed for any week beginning on and after July 7, 1991, and before July 5, 1992, the weekly benefit amount may not exceed:

(1) one hundred sixteen dollars (\$116) if the eligible and qualified individual has no dependents;

(2) one hundred thirty-four dollars (\$134) if the eligible and qualified individual has one (1) dependent;

(3) one hundred fifty-three dollars (\$153) if the eligible and qualified individual has two (2) dependents; or

(4) one hundred seventy-one dollars (\$171) if the eligible and qualified individual has three (3) or more dependents.

(f) With respect to initial claims filed for any week beginning on and after July 5, 1992, and before July 4, 1993, the weekly benefit amount may not exceed:

(1) one hundred forty dollars (\$140) if the eligible and qualified individual has no dependents;

(2) one hundred sixty dollars (\$160) if the eligible and qualified individual has one (1) dependent; or

(3) one hundred eighty-one dollars (\$181) if the eligible and qualified individual has two (2) or more dependents.

(g) With respect to initial claims filed for any week beginning on and after July 4, 1993, and before July 3, 1994, the weekly benefit amount may not exceed:

(1) one hundred seventy dollars (\$170) if the eligible and qualified individual has no dependents; or

(2) one hundred ninety-two dollars (\$192) if the eligible and qualified individual has one (1) or more dependents.

(h) With respect to initial claims filed for any week beginning on or after July 3, 1994, and before July 1, 1995, the weekly benefit amount may not exceed two hundred two dollars (\$202):

(i) With respect to initial claims filed for any week on or after July

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1 1, 1995; the weekly benefit amount will equal the amount that results
 2 from applying the percentages provided in subsections (j) through (k)
 3 to the applicable maximum wage credits under IC 22-4-4-3.

4 (j) With respect to initial claims filed for any week beginning on and
 5 after July 1, 1995, and before July 1, 1997, each eligible individual who
 6 is totally unemployed (as defined in IC 22-4-3-1) in any week in the
 7 individual's benefit period shall be paid for the week, if properly
 8 claimed, benefits at the rate of:

9 (1) five percent (5%) of the first one thousand seven hundred fifty
 10 dollars (\$1,750) of the individual's wage credits in the calendar
 11 quarter during the individual's base period in which the wage
 12 credits were highest; and

13 (2) four percent (4%) of the individual's remaining wage credits
 14 in the calendar quarter during the individual's base period in
 15 which the wage credits were highest.

16 However, the weekly benefit amount may not exceed the amount
 17 specified in subsection (i):

18 ~~(k)~~ (c) With respect to initial claims filed for any week beginning on
 19 and after July 1, 1997, **and before January 1, 2010**, each eligible
 20 individual who is totally unemployed (as defined in IC 22-4-3-1) in any
 21 week in the individual's benefit period shall be paid for the week, if
 22 properly claimed, benefits at the rate of:

23 (1) five percent (5%) of the first two thousand dollars (\$2,000) of
 24 the individual's wage credits in the calendar quarter during the
 25 individual's base period in which the wage credits were highest;
 26 and

27 (2) four percent (4%) of the individual's remaining wage credits
 28 in the calendar quarter during the individual's base period in
 29 which the wage credits were highest.

30 (d) With respect to initial claims filed for any week beginning on
 31 and after January 1, 2010, each eligible individual who is totally
 32 unemployed (as defined in IC 22-4-3-1) in any week in the
 33 individual's benefit period shall be paid for the week, if properly
 34 claimed, an amount determined as follows:

35 (1) During each of the first four (4) weeks in the individual's
 36 benefit period in which the individual is entitled to benefits,
 37 the individual is entitled to weekly benefits equal to fifty
 38 percent (50%) of the individual's prior average weekly wage,
 39 rounded (if not already a multiple of one dollar (\$1)) to the
 40 next higher dollar.

41 (2) During the fifth week and the sixth week in the individual's
 42 benefit period in which the individual is entitled to benefits,

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the individual is entitled to weekly benefits equal to the result of:

(A) the weekly benefit amount received by the individual under subdivision (1); multiplied by
(B) ninety percent (90%);
rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) During the seventh week and the eighth week in the individual's benefit period in which the individual is entitled to benefits, the individual is entitled to weekly benefits equal to the result of:

(A) the weekly benefit amount received by the individual under subdivision (2); multiplied by
(B) ninety percent (90%);
rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(4) During the ninth week and any subsequent week in the individual's benefit period in which the individual is entitled to benefits, the individual is entitled to weekly benefits equal to the result of:

(A) the weekly benefit amount received by the individual under subdivision (3); multiplied by
(B) ninety percent (90%);
rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(5) Notwithstanding subdivisions (1) through (4), if, for any week in an individual's benefit period, the individual:

(A) is totally unemployed (as defined in IC 22-4-3-1); and
(B) is participating in approved training (as defined by the department);

the individual's weekly benefits, if properly claimed, for that week shall not be reduced from the weekly benefit amount the individual was entitled to receive in the week immediately preceding the week in which the individual first satisfied the requirements of clauses (A) and (B) or in any week thereafter in which the individual continues to satisfy the requirements of clauses (A) and (B).

(6) Notwithstanding subdivisions (1) through (5), the weekly benefit amount may not be less than fifty dollars (\$50).

(7) If an individual:

(A) is re-employed before the individual exhausts the weekly benefits that the individual is entitled to receive, if

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properly claimed, during the individual's benefit period;
and

(B) becomes unemployed for a second time during the
same benefit period;

the individual's weekly benefit shall be determined for the
next applicable week in the individual's benefit period, if
properly claimed, by taking into account the weekly benefits
already paid in the individual's benefit period.

(e) For purposes of this section, "prior average weekly wage"
means the result of:

(1) the individual's total wage credits during the individual's
base period; divided by

(2) fifty-two (52).

SECTION 26. IC 22-4-12-4 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Benefits shall be
computed upon the basis of wage credits of an individual in ~~his~~ **the**
individual's base period. Wage credits shall be reported by the
employer and credited to the individual in the manner prescribed by the
board. With respect to initial claims filed for any week beginning on
and after July 4, 1959, and before July 7, 1991, the maximum total
amount of benefits payable to any eligible individual during any benefit
period shall not exceed twenty-six (26) times his weekly benefit, or
twenty-five percent (25%) of his wage credits with respect to his base
period, whichever is the lesser. With respect to initial claims filed for
any week beginning on and after July 7, 1991, the maximum total
amount of benefits payable to any eligible individual during any benefit
period shall not exceed twenty-six (26) times the individual's weekly
benefit, or twenty-eight percent (28%) of the individual's wage credits
with respect to the individual's base period, whichever is less. If such
maximum total amount of benefits is not a multiple of one dollar (\$1),
it shall be computed to the next lower multiple of one dollar (\$1).

(b) The total extended benefit amount payable to any eligible
individual with respect to ~~his~~ **the individual's** applicable benefit period
shall be fifty percent (50%) of the total amount of regular benefits
(including dependents' allowances) which were payable to ~~him~~ **the**
individual under this article in the applicable benefit year, or thirteen
(13) times the weekly benefit amount (including dependents'
allowances) which was payable to ~~him~~ **the individual** under this article
for a week of total unemployment in the applicable benefit year,
whichever is the lesser amount.

(c) This subsection applies to individuals who file a disaster
unemployment claim or a state unemployment insurance claim after

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June 1, 1990, and before June 2, 1991, or during another time specified in another state statute. An individual is entitled to thirteen (13) weeks of additional benefits, as originally determined, if:

(1) the individual has established:

(A) a disaster unemployment claim under the Stafford Disaster Relief and Emergency Assistance Act; or

(B) a state unemployment insurance claim as a direct result of a major disaster;

(2) all regular benefits and all disaster unemployment assistance benefits:

(A) have been exhausted by the individual; or

(B) are no longer payable to the individual due to the expiration of the disaster assistance period; and

(3) the individual remains unemployed as a direct result of the disaster.

SECTION 27. IC 22-4-13-1.1, AS ADDED BY P.L.108-2006, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.1. (a) Notwithstanding any other provisions of this article, if an individual knowingly:

(1) fails to disclose amounts earned during any week in the individual's waiting period, benefit period, or extended benefit period; or

(2) fails to disclose or has falsified any fact;

that would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits or extended benefits, the individual forfeits any department shall cancel all of the individual's wage credits earned or any benefits or extended benefits that might otherwise be payable to the individual for established before the period in which the failure to disclose or falsification occurs and any benefits or extended benefits that might otherwise have become payable to the individual, and any benefit rights or extended benefit rights based on those wage credits shall be forfeited.

(b) In addition to amounts forfeited under subsection (a), an individual is subject to the following civil penalties for each instance in which the individual knowingly fails to disclose or falsifies any fact that if accurately reported to the department would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits or extended benefits:

(1) For the first instance, an amount equal to twenty-five percent (25%) of the benefit overpayment.

(2) For the second instance, an amount equal to fifty percent

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(50%) of the benefit overpayment.

(3) For the third and each subsequent instance, an amount equal to one hundred percent (100%) of the benefit overpayment.

(c) The department's determination under this section constitutes an initial determination under IC 22-4-17-2(e) and is subject to a hearing and review under IC 22-4-17-3 through IC 22-4-17-15.

(d) Interest and civil penalties collected under this chapter shall be deposited in the special employment and training services fund established under IC 22-4-25-1.

(e) An individual, group, association, or other entity that knowingly advises or assists an individual in a failure to disclose or falsification described in subsection (a) is jointly and severally liable to the department for all overpayments and penalties set forth in this section. Each claim on which the individual, group, association, or other entity has provided advice or has assisted is considered a separate instance for purposes of determining the penalty under subsection (b).

SECTION 28. IC 22-4-14-1, AS AMENDED BY P.L.138-2008, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in IC 22-4-5-1 or subsection (b), ~~or (c);~~ an unemployed individual shall be eligible to receive benefits with respect to any week only if the individual has made a claim for benefits in accordance with IC 22-4-17.

(b) A person who:

(1) accepts a layoff under an inverse seniority clause of a validly negotiated contract; and

(2) otherwise meets the eligibility requirements established by this article;

is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person.

~~(c) This subsection does not apply to a person who elects to retire in connection with a layoff or plant closure and receive pension, retirement, or annuity payments. Except as provided in IC 22-4-5-1, a person who:~~

~~(1) accepts an offer of payment or other compensation offered by an employer to avert or lessen the effect of a layoff or plant closure; and~~

~~(2) otherwise meets the eligibility requirements established by this article;~~

~~is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed~~

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1 ~~person.~~

2 SECTION 29. IC 22-4-14-2, AS AMENDED BY P.L.108-2006,
3 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2009]: Sec. 2. (a) An unemployed individual is eligible to
5 receive benefits with respect to any week only if the individual has:

6 (1) registered for work at an employment office or branch thereof
7 or other agency designated by the commissioner within the time
8 limits that the department by rule adopts; and

9 (2) subsequently reported with the frequency and in the manner,
10 either in person or in writing, that the department by rule adopts.

11 (b) Failure to comply with subsection (a) shall be excused by the
12 commissioner or the commissioner's authorized representative upon a
13 showing of good cause therefor. ~~The department shall by rule waive or~~
14 ~~alter the requirements of this section as to such types of cases or~~
15 ~~situations with respect to which the department finds that compliance~~
16 ~~with such requirements would be oppressive or would be inconsistent~~
17 ~~with the purposes of this article.~~

18 (c) The department shall provide job counseling or training to an
19 individual who remains unemployed for at least four (4) weeks. The
20 manner and duration of the counseling shall be determined by the
21 department.

22 (d) An individual who is receiving benefits as determined under
23 IC 22-4-15-1(c)(8) is entitled to complete the reporting, counseling, or
24 training that must be conducted in person at a one stop center selected
25 by the individual. The department shall advise an eligible individual
26 that this option is available.

27 **(e) If:**

28 **(1) an otherwise eligible individual fails without good cause,**
29 **as determined by the commissioner under rules prescribed by**
30 **the commissioner, to attend a job search workshop or a**
31 **training or retraining course when directed by the**
32 **department; and**

33 **(2) the workshop or course is available at public expense;**
34 **the individual is not eligible for benefits with respect to any week**
35 **in which the failure occurred.**

36 SECTION 30. IC 22-4-14-3, AS AMENDED BY P.L.108-2006,
37 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2009]: Sec. 3. (a) An individual who is receiving benefits as
39 determined under IC 22-4-15-1(c)(8) may restrict the individual's
40 availability because of the individual's need to address the physical,
41 psychological, or legal effects of being a victim of domestic or family
42 violence (as defined in IC 31-9-2-42).

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(b) An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

- (1) is physically and mentally able to work;
- (2) is available for work;
- (3) is found by the department to be making an effort to secure full-time work; and
- (4) participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services under a profiling system established by the department, unless the department determines that:

- (A) the individual has completed the reemployment services; or

- (B) failure by the individual to participate in or complete the reemployment services is excused by the director under IC 22-4-14-2(b).

The term "effort to secure full-time work" shall be defined by the ~~board~~ **department** through rule which shall take into consideration whether such individual has a reasonable assurance of reemployment and, if so, the length of the prospective period of unemployment, **but must include as a condition the individual's submission of at least three (3) separate applications for work in each week for which the individual is claiming benefits.** However, if an otherwise eligible individual is unable to work or unavailable for work on any normal work day of the week the individual shall be eligible to receive benefits with respect to such week reduced by one-third (1/3) of the individual's weekly benefit amount for each day of such inability to work or unavailability for work.

(c) For the purpose of this article, unavailability for work of an individual exists in, but is not limited to, any case in which, with respect to any week, it is found:

- (1) that such individual is engaged by any unit, agency, or instrumentality of the United States, in charge of public works or assistance through public employment, or any unit, agency, or instrumentality of this state, or any political subdivision thereof, in charge of any public works or assistance through public employment;
- (2) that such individual is in full-time active military service of the United States, or is enrolled in civilian service as a conscientious objector to military service;
- (3) that such individual is suspended for misconduct in connection with the individual's work; or

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(4) that such individual is in attendance at a regularly established public or private school during the customary hours of the individual's occupation or is in any vacation period intervening between regular school terms during which the individual is a student. However, this subdivision does not apply to any individual who is attending a regularly established school, has been regularly employed and upon becoming unemployed makes an effort to secure full-time work and is available for suitable full-time work with the individual's last employer, or is available for any other full-time employment deemed suitable.

(d) Notwithstanding any other provisions in this section or IC 22-4-15-2, no otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the department, nor shall such individual be denied benefits with respect to any week in which the individual is in training with the approval of the department by reason of the application of the provisions of this section with respect to the availability for work or active search for work or by reason of the application of the provisions of IC 22-4-15-2 relating to failure to apply for, or the refusal to accept, suitable work. The department shall by rule prescribe the conditions under which approval of such training will be granted.

SECTION 31. IC 22-4-14-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. ~~As a condition precedent to the payment of benefits to an individual with respect to any week such individual~~ **A claimant shall be required to serve a waiting period of one (1) week in which he the claimant has been totally, partially, or part-totally unemployed and with respect to which he has received no before receiving benefits. but during which he was** **A claimant must be** eligible for benefits in all other respects and was not otherwise ineligible for benefits under any provisions of this article **during the waiting period.** Such waiting period shall be a week in the individual's benefit period and during such week such individual shall be physically and mentally able to work and available for work. **A claimant shall serve a waiting period upon filing any initial or additional claim if the claimant has received from any source (other than unemployment insurance benefits) remuneration that exceeds the claimant's maximum weekly benefit in each week for six (6) or more weeks preceding the claim or initial claim, regardless of whether the claimant has previously served a waiting period.** No individual in a benefit period may file for waiting period or benefit period rights with respect to any subsequent period. ~~Provided,~~ However, ~~that~~ no waiting period shall be required as a prerequisite for

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1 drawing extended benefits.

2 SECTION 32. IC 22-4-14-5 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) As further
4 conditions precedent to the payment of benefits to an individual with
5 respect to benefit periods established on and after July 6, 1980; and
6 before July 7, 1985:

7 (1) the individual must have established; after the last day of his
8 last base period; if any, wage credits (as defined in IC 22-4-4-3)
9 and within the meaning of IC 22-4-22-3 equal to at least one and
10 one-quarter (1.25) times the wages paid to him in the calendar
11 quarter in which his wages were highest; and

12 (2) the individual must have established wage credits in the last
13 two (2) calendar quarters of his base period in a total amount of
14 not less than nine hundred dollars (\$900) and an aggregate
15 amount in the four (4) calendar quarters of his base period of not
16 less than one thousand five hundred dollars (\$1,500):

17 (b) As further conditions precedent to the payment of benefits to an
18 individual with respect to benefit periods established on and after July
19 7, 1985; and before January 1, 1992:

20 (1) the individual must have established; after the last day of the
21 individual's last base period; if any, wage credits (as defined in
22 IC 22-4-4-3 and within the meaning of IC 22-4-22-3) equal to at
23 least one and one-half (1.5) times the wages paid to the individual
24 in the calendar quarter in which the individual's wages were
25 highest; and

26 (2) the individual must have established wage credits in the last
27 two (2) calendar quarters of the individual's base period in a total
28 amount of not less than one thousand five hundred dollars
29 (\$1,500) and an aggregate amount in the four (4) calendar
30 quarters of the individual's base period of not less than two
31 thousand five hundred dollars (\$2,500):

32 (c) As further conditions precedent to the payment of benefits to an
33 individual with respect to benefit periods established on and after
34 January 1, 1992; and before July 1, 1995:

35 (1) the individual must have established; after the last day of the
36 individual's last base period; if any, wage credits (as defined in
37 IC 22-4-4-3 and within the meaning of IC 22-4-22-3) equal to at
38 least one and one-quarter (1.25) times the wages paid to the
39 individual in the calendar quarter in which the individual's wages
40 were highest; and

41 (2) the individual must have established wage credits in the last
42 two (2) calendar quarters of the individual's base period in a total

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amount of not less than one thousand five hundred dollars (\$1,500) and an aggregate in the four (4) calendar quarters of the individual's base period of not less than two thousand five hundred dollars (\$2,500):

~~(d)~~ (a) As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after July 1, 1995, **but before January 1, 2010:**

(1) the individual must have established, after the last day of the individual's last base period, if any, wage credits (as defined in IC 22-4-4-3 and within the meaning of IC 22-4-22-3) equal to at least one and one-quarter (1.25) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and

(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than one thousand six hundred fifty dollars (\$1,650) and an aggregate in the four (4) calendar quarters of the individual's base period of not less than two thousand seven hundred fifty dollars (\$2,750).

~~(e)~~ (b) As a further condition precedent to the payment of benefits to an individual with respect to a benefit year established on and after July 1, 1995, an insured worker may not receive benefits in a benefit year unless after the beginning of the immediately preceding benefit year during which the individual received benefits, the individual performed insured work and earned wages in employment under IC 22-4-8 in an amount not less than the individual's weekly benefit amount established for the individual in the preceding benefit year in each of eight (8) weeks.

(c) As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after January 1, 2010:

(1) the individual must have established, after the last day of the individual's last base period, if any, wage credits (as defined in IC 22-4-4-3 and within the meaning of wages under IC 22-4-22-3) equal to at least one and five-tenths (1.5) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and

(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than two thousand five hundred dollars (\$2,500) and a total amount in the four (4) calendar quarters of the individual's base period of not less than four

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1 thousand two hundred dollars (\$4,200).

2 (d) As a further condition precedent to the payment of benefits
3 to an individual with respect to a benefit year established on and
4 after January 1, 2010, an individual may not receive benefits in a
5 benefit year unless the individual has earned wage credits
6 exceeding one thousand dollars (\$1,000) in three (3) separate
7 calendar quarters of the individual's base period.

8 SECTION 33. IC 22-4-14-11 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) For weeks of
10 unemployment occurring after October 1, 1983, benefits may be paid
11 to an individual on the basis of service performed in seasonal
12 employment (as defined in IC 22-4-8-4) only if the claim is filed within
13 the operating period of the seasonal employment. If the claim is filed
14 outside the operating period of the seasonal employment, benefits may
15 be paid on the basis of nonseasonal wages only.

16 (b) An employer shall file an application for a seasonal
17 determination (as defined by IC 22-4-7-3) with the department of
18 workforce development. A seasonal determination shall be made by the
19 department within ninety (90) days after the filing of such an
20 application. Until a seasonal determination by the department has been
21 made in accordance with this section, no employer or worker may be
22 considered seasonal.

23 (c) Any interested party may file an appeal regarding a seasonal
24 determination within fifteen (15) calendar days after the determination
25 by the department and obtain review of the determination in
26 accordance with IC 22-4-32.

27 (d) Whenever an employer is determined to be a seasonal employer,
28 the following provisions apply:

29 (1) The seasonal determination becomes effective the first day of
30 the calendar quarter commencing after the date of the seasonal
31 determination.

32 (2) The seasonal determination does not affect any benefit rights
33 of seasonal workers with respect to employment before the
34 effective date of the seasonal determination.

35 (e) If a seasonal employer, after the date of its seasonal
36 determination, operates its business or its seasonal operation during a
37 period or periods of twenty-six (26) weeks or more in a calendar year,
38 the employer shall be determined by the department to have lost its
39 seasonal status with respect to that business or operation effective at
40 the end of the then current calendar quarter. The redetermination shall
41 be reported in writing to the employer. Any interested party may file an
42 appeal within fifteen (15) calendar days after the redetermination by

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the department and obtain review of the redetermination in accordance with IC 22-4-32.

(f) (e) Seasonal employers shall keep account of wages paid to seasonal workers within the seasonal period as determined by the department and shall report these wages on a special seasonal quarterly report form provided by the department.

(g) (f) The ~~board~~ **department** shall adopt rules applicable to seasonal employers for determining their normal seasonal period or periods.

SECTION 34. IC 22-4-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) With respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left the individual's ~~most recent~~ employment without good cause in connection with the work or who was discharged from the individual's ~~most recent~~ employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction will be raised to the next higher even dollar amount. ~~The maximum benefit amount may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.~~

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer

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voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

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- 1 (A) the employment was outside the individual's labor market;
 2 (B) the individual left to accept previously secured full-time
 3 work with an employer in the individual's labor market; and
 4 (C) the individual actually became employed with the
 5 employer in the individual's labor market.
- 6 (7) An individual who, but for the voluntary separation to move
 7 to another labor market to join a spouse who had moved to that
 8 labor market, shall not be disqualified for that voluntary
 9 separation, if the individual is otherwise eligible for benefits.
 10 Benefits paid to the spouse whose eligibility is established under
 11 this subdivision shall not be charged against the employer from
 12 whom the spouse voluntarily separated.
- 13 (8) An individual shall not be subject to disqualification if the
 14 individual voluntarily left employment or was discharged due to
 15 circumstances directly caused by domestic or family violence (as
 16 defined in IC 31-9-2-42). An individual who may be entitled to
 17 benefits based on this modification may apply to the office of the
 18 attorney general under IC 5-26.5 to have an address designated by
 19 the office of the attorney general to serve as the individual's
 20 address for purposes of this article.
- 21 As used in this subsection, "labor market" means the area surrounding
 22 an individual's permanent residence, outside which the individual
 23 cannot reasonably commute on a daily basis. In determining whether
 24 an individual can reasonably commute under this subdivision, the
 25 department shall consider the nature of the individual's job.
- 26 (d) "Discharge for just cause" as used in this section is defined to
 27 include but not be limited to:
- 28 (1) separation initiated by an employer for falsification of an
 29 employment application to obtain employment through
 30 subterfuge;
- 31 (2) knowing violation of a reasonable and uniformly enforced rule
 32 of an employer, **including a rule regarding attendance;**
- 33 (3) **if an employer does not have a rule regarding attendance,**
 34 **an individual's** unsatisfactory attendance, if the individual cannot
 35 show good cause for absences or tardiness;
- 36 (4) damaging the employer's property through willful negligence;
- 37 (5) refusing to obey instructions;
- 38 (6) reporting to work under the influence of alcohol or drugs or
 39 consuming alcohol or drugs on employer's premises during
 40 working hours;
- 41 (7) conduct endangering safety of self or coworkers; ~~or~~
- 42 (8) incarceration in jail following conviction of a misdemeanor or

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felony by a court of competent jurisdiction; or ~~for~~

(9) any breach of duty in connection with work which is reasonably owed an employer by an employee.

(e) To verify that domestic or family violence has occurred, an individual who applies for benefits under subsection (c)(8) shall provide one (1) of the following:

(1) A report of a law enforcement agency (as defined in IC 10-13-3-10).

(2) A protection order issued under IC 34-26-5.

(3) A foreign protection order (as defined in IC 34-6-2-48.5).

(4) An affidavit from a domestic violence service provider verifying services provided to the individual by the domestic violence service provider.

(f) An employer's failure to provide a reason for termination at the time of discharge shall not prevent a finding of discharge for just cause if the individual is aware or should be aware of the reason for termination.

SECTION 35. IC 22-4-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for waiting period or benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:

(1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;

(2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the individual by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service, or an employment unit; or

(3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not

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1 been earned at the expiration of an individual's benefit period, the
 2 unearned amount shall be carried forward to an extended benefit period
 3 or to the benefit period of a subsequent claim.

4 (c) With respect to extended benefit periods established on and after
 5 July 5, 1981, the ineligibility shall continue for the week in which the
 6 failure occurs and until the individual earns remuneration in
 7 employment equal to or exceeding the weekly benefit amount of the
 8 individual's claim in each of four (4) weeks.

9 (d) If an individual failed to apply for or accept suitable work as
 10 outlined in this section, the maximum benefit amount of the
 11 individual's current claim, as initially determined, shall be reduced by
 12 twenty-five percent (25%). If twenty-five percent (25%) of the
 13 maximum benefit amount is not an even dollar amount, the amount of
 14 such reduction shall be raised to the next higher even dollar amount.
 15 ~~The maximum benefit amount of the individual's current claim may not~~
 16 ~~be reduced by more than twenty-five percent (25%) during any benefit~~
 17 ~~period or extended benefit period.~~

18 (e) In determining whether or not any such work is suitable for an
 19 individual, the department shall consider:

- 20 (1) the degree of risk involved to such individual's health, safety,
 21 and morals;
- 22 (2) the individual's physical fitness and prior training and
 23 experience;
- 24 (3) the individual's length of unemployment and prospects for
 25 securing local work in the individual's customary occupation; and
- 26 (4) the distance of the available work from the individual's
 27 residence.

28 However, work under substantially the same terms and conditions
 29 under which the individual was employed by a base-period employer,
 30 which is within the individual's prior training and experience and
 31 physical capacity to perform, shall be considered to be suitable work
 32 unless the claimant has made a bona fide change in residence which
 33 makes such offered work unsuitable to the individual because of the
 34 distance involved. **During the first four (4) consecutive weeks of**
 35 **claiming benefits, work is not considered unsuitable solely because**
 36 **the work pays not less than eighty percent (80%) of the individual's**
 37 **prior weekly wage. During the fifth through the twelfth consecutive**
 38 **week of claiming benefits, work shall not be considered unsuitable**
 39 **solely because the work pays not less than sixty percent (60%) of**
 40 **the individual's prior weekly wage. After twelve (12) consecutive**
 41 **weeks of claiming benefits, work shall not be considered unsuitable**
 42 **solely because the work pays not less than fifty percent (50%) of**

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the individual's prior weekly wage. For an individual who is subject to section 1(c)(8) of this chapter, the determination of suitable work for the individual must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic or family violence.

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.

(4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:

(A) the individual's average weekly benefit amount for the individual's benefit year; plus

(B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.

(2) If the position was not offered to the individual in writing or

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1 was not listed with the department of workforce development.

2 (3) If such failure would not result in a denial of compensation
3 under the provisions of this article to the extent that such
4 provisions are not inconsistent with the applicable federal law.

5 (4) If the position pays wages less than the higher of:

6 (A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the
7 Fair Labor Standards Act of 1938), without regard to any
8 exemption; or

9 (B) the state minimum wage (IC 22-2-2).

10 (i) The department of workforce development shall refer individuals
11 eligible for extended benefits to any suitable work (as defined in
12 subsection (g)) to which subsection (h) would not apply.

13 SECTION 36. IC 22-4-15-4 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) **Subject to**
15 **IC 22-4-14-4**, an individual shall be ineligible for waiting period or
16 benefit rights for any week with respect to which the individual
17 receives, is receiving, or has received payments equal to or exceeding
18 **his the individual's** weekly benefit amount in the form of:

19 (1) deductible income as defined and applied in IC 22-4-5-1 and
20 IC 22-4-5-2; or

21 (2) any pension, retirement or annuity payments, under any plan
22 of an employer whereby the employer contributes a portion or all
23 of the money. This disqualification shall apply only if some or all
24 of the benefits otherwise payable are chargeable to the experience
25 or reimbursable account of such employer, or would have been
26 chargeable except for the application of this chapter. For the
27 purposes of this subdivision, ~~(2)~~, federal old age, survivors and
28 disability insurance benefits are not considered payments under
29 a plan of an employer whereby the employer maintains the plan
30 or contributes a portion or all of the money to the extent required
31 by federal law.

32 (b) If the payments described in subsection (a) are less than ~~his the~~
33 **individual's** weekly benefit amount, an otherwise eligible individual
34 shall not be ineligible and shall be entitled to receive for such week
35 benefits reduced by the amount of such payments.

36 (c) This section does not preclude an individual from delaying a
37 claim to pension, retirement, or annuity payments until the individual
38 has received the benefits to which the individual would otherwise be
39 eligible under this chapter. Weekly benefits received before the date
40 the individual elects to retire shall not be reduced by any pension,
41 retirement, or annuity payments received on or after the date the
42 individual elects to retire.

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SECTION 37. IC 22-4-15-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.1. (a) Notwithstanding any other provisions of this article, all of the individual's wage credits established prior to the day upon which the individual was discharged for gross misconduct in connection with work are canceled.

(b) As used in this section, "gross misconduct" ~~includes~~ means any of the following, as determined by the department by a preponderance of the evidence:

- (1) A felony. ~~or~~
- (2) A Class A misdemeanor. ~~committed in connection with work but only if the felony or misdemeanor is admitted by the individual or has resulted in a conviction.~~
- (3) Working, or reporting for work, in a state of intoxication caused by the individual's use of alcohol or a controlled substance (as defined in IC 35-48-1-9).
- (4) Battery on another individual while on the employer's property or during working hours.
- (5) Theft or embezzlement.
- (6) Fraud.

(c) An employer:

- (1) has the burden of proving by a preponderance of the evidence that a discharged employee's conduct was gross misconduct; and
- (2) may present evidence that the employer filled or maintained the position or job held by the discharged employee after the employee's discharge.

(d) It is not a defense under this section that a discharged employee's conduct did not result in:

- (1) a prosecution for an offense; or
- (2) a conviction of an offense.

SECTION 38. IC 22-4-17-2, AS AMENDED BY P.L.108-2006, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) When an individual files an initial claim, the department shall promptly make a determination of the individual's status as an insured worker in a form prescribed by the department. A written notice of the determination of insured status shall be furnished to the individual promptly. Each such determination shall be based on and include a written statement showing the amount of wages paid to the individual for insured work by each employer during the individual's base period and shall include a finding as to whether such wages meet the requirements for the individual to be an insured

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worker, and, if so, the week ending date of the first week of the individual's benefit period, the individual's weekly benefit amount, and the maximum amount of benefits that may be paid to the individual for weeks of unemployment in the individual's benefit period. For the individual who is not insured, the notice shall include the reason for the determination. Unless the individual, within ten (10) days after such determination was mailed to the individual's last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) The department shall promptly furnish each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to such individual with a notice in writing of the employer's benefit liability. ~~Such~~ **The** notice shall contain the date, the name and Social Security account number of the individual, the ending date of the individual's base period, ~~and the week ending date of the first week of the individual's benefit period, Such the time by which the employer is required to respond to the notice, and complete information about the rules of evidence and standards of proof that the department will apply to determine the validity of a claim, if an employer disputes the claim.~~ The notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. **An employer in an individual's base period is entitled to ask for a hearing concerning an individual's eligibility to receive benefits not later than ten (10) days after the date the notice of the benefit liability was mailed to the employer's last known address or otherwise delivered to the employer.** Unless ~~the~~ **an** employer within ~~ten (10) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer,~~ asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

(c) An employing unit, including an employer, having knowledge of any facts which may affect an individual's eligibility or right to waiting period credits or benefits, shall notify the department of such facts within ten (10) days after the mailing of notice that a former employee has filed an initial or additional claim for benefits on a form prescribed by the department.

(d) **If, after the department determines that additional information is necessary to make a determination under this**

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chapter:

(1) the department makes a request in writing for additional information from an employing unit, including an employer, on a form prescribed by the department; and

(2) the employing unit fails to respond within ten (10) days after the date the request is delivered to the employing unit; the department shall make the determination with the information available.

(e) If:

(1) an employer subsequently obtains a determination by the department that the employee is not eligible for benefits; and

(2) the determination is at least in part based on information that the department requested from the employer under subsection (d), but which the employer failed to provide within ten (10) days after the department's request was delivered to the employer;

the employer's experience account shall be charged an amount equal to fifty percent (50%) of the benefits paid to the employee to which the employee was not entitled.

(f) If:

(1) the employer's experience account is charged under subsection (e); and

(2) the employee repays all or a part of the benefits on which the charge under subsection (e) is based;

the employer shall receive a credit to the employer's experience account that is equal to the amount of the employee's repayment up to the amount charged to the employer's experience account under subsection (e).

~~(d)~~ (g) In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period, determine the claimant's eligibility with respect to each week for which the claimant claims waiting period credit or benefit rights, the validity of the claimant's claim therefor, and the cause for which the claimant left the claimant's work, or may refer such claim to an administrative law judge who shall make the initial determination with respect thereto in accordance with the procedure in ~~HC 22-4-17-3~~. **section 3 of this chapter. Before a determination is made under this subsection, each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to the claimant must receive notice of the employer's potential benefit liability, the time by which the employer is required to respond to the notice, and complete information about the rules of**

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evidence and standards of proof that the deputy will apply to determine the validity of the claim.

~~(e)~~ **(h)** In cases where the claimant's benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer or employers directly involved or connected with the issue raised as to the validity of such claim, the eligibility of the claimant for waiting period credit or benefits, or the imposition of a disqualification period or penalty, or the denial thereof, and of the cause for which the claimant left the claimant's work, of such determination and the reasons thereof.

(i) Except as otherwise hereinafter provided in this ~~subsection~~ **section** regarding parties located in Alaska, Hawaii, and Puerto Rico, unless the claimant or such employer, within ten (10) days after ~~such~~ **the** notification **required by subsection (g)** was mailed to the claimant's or the employer's last known address or otherwise delivered to the claimant or the employer, asks **for** a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. ~~With respect to~~

(j) ~~For a~~ notice of disputed administrative determination or decision mailed or otherwise delivered to the claimant or employer either of whom is located in Alaska, Hawaii, or Puerto Rico, unless ~~such the~~ **the** claimant or employer, within fifteen (15) days after ~~such the~~ **the** notification **required by subsection (g)** was mailed to the claimant's or employer's last known address or otherwise delivered to the claimant or employer, asks **for** a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith.

(k) If ~~such a claimant or an employer requests a~~ **desired, under subsection (i) or (j),** the request therefor shall be filed with the department in writing within the prescribed periods as above set forth in this ~~subsection~~ **section** and shall be in such form as the department may prescribe. In the event a hearing is requested by an employer or the department after it has been administratively determined that benefits should be allowed to a claimant, entitled benefits shall continue to be paid to said claimant unless said administrative determination has been reversed by a due process hearing. Benefits with respect to any week not in dispute shall be paid promptly regardless of any appeal.

~~(f)~~ **(l)** A person may not participate on behalf of the department in any case in which the person is an interested party.

~~(g)~~ **(m)** Solely on the ground of obvious administrative error

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appearing on the face of an original determination, and within the benefit year of the affected claims, the commissioner, or a representative authorized by the commissioner to act in the commissioner's behalf, may reconsider and direct the deputy to revise the original determination so as to correct the obvious error appearing therein. Time for filing an appeal and requesting a hearing before an administrative law judge regarding the determinations handed down pursuant to this subsection shall begin on the date following the date of revision of the original determination and shall be filed with the commissioner in writing within the prescribed periods as above set forth in subsection (c).

~~(h)~~ **(n)** Notice to the employer and the claimant that the determination of the department is final if a hearing is not requested shall be prominently displayed on the notice of the determination which is sent to the employer and the claimant.

~~(i)~~ **(o)** If an allegation of the applicability of IC 22-4-15-1(c)(8) is made by the individual at the time of the claim for benefits, the department shall not notify the employer of the claimant's current address or physical location.

SECTION 39. IC 22-4-17-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. **(a)** Unless such request for hearing is withdrawn, an administrative law judge, after **providing the notice required under section 6 of this chapter and** affording the parties a reasonable opportunity for fair hearing, shall affirm, modify, or reverse the findings of fact and decision of the deputy.

(b) The parties shall be duly notified of ~~such~~ **the decision made under subsection (a)** and the reasons therefor, which shall be deemed to be the final decision of the review board, unless within fifteen (15) days after the date of notification or mailing of such decision, an appeal is taken by the commissioner or by any party adversely affected by such decision to the review board.

SECTION 40. IC 22-4-17-4, AS AMENDED BY P.L.108-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. **(a)** The department shall employ one (1) or more administrative law judges to hear and decide disputed claims. Administrative law judges employed under this section are not subject to IC 4-21.5 or any other statute regulating administrative law judges, unless specifically provided.

(b) The department shall provide at least annually to all administrative law judges, review board members, and other individuals who adjudicate claims training concerning:

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- (1) unemployment compensation law;
- (2) rules for the conduct of hearings and appeals; and
- (3) rules of conduct for administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process.

(c) The department regularly shall monitor the hearings and decisions of its administrative law judges, review board members, and other individuals who adjudicate claims to ensure that the hearings and decisions strictly comply with the law and the rules described in subsection (b).

(d) An individual who does not strictly comply with the law and the rules described in subsection (b), including the rules of conduct for administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process, is subject to disciplinary action by the department, up to and including suspension from or termination of employment.

SECTION 41. IC 22-4-17-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The governor shall appoint a review board composed of three (3) members, not more than two (2) of whom shall be members of the same political party, with salaries to be fixed by the governor. The review board shall consist of the chairman and the two (2) members who shall serve for terms of three (3) years. At least one (1) member must be admitted to the practice of law in Indiana.

(b) Any claim pending before an administrative law judge, and all proceedings therein, may be transferred to and determined by the review board upon its own motion, at any time before the administrative law judge announces his a decision. Any claim pending before either an administrative law judge or the review board may be transferred to the board for determination at the direction of the board. If the review board considers it advisable to procure additional evidence, it may direct the taking of additional evidence within a time period it shall fix. **An employer that is a party to a claim transferred to the review board or the board under this subsection is entitled to receive notice in accordance with section 6 of this chapter of the transfer or any other action to be taken under this section before a determination is made or other action concerning the claim is taken.**

(c) Any proceeding so removed to the review board shall be heard by a quorum of the review board in accordance with the requirements of section 3 of this chapter. The review board shall notify the parties to

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any claim of its decision, together with its reasons for the decision.

(d) Members of the review board, when acting as administrative law judges, are subject to section 15 of this chapter.

(e) The review board may on the board's own motion affirm, modify, set aside, remand, or reverse the findings, conclusions, or orders of an administrative law judge on the basis of any of the following:

(1) Evidence previously submitted to the administrative law judge.

(2) The record of the proceeding after the taking of additional evidence as directed by the review board.

(3) A procedural error by the administrative law judge.

SECTION 42. IC 22-4-17-6, AS AMENDED BY P.L.108-2006, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. **(a)** The manner in which disputed claims shall be presented and the conduct of hearings and appeals, **including the conduct of administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process**, shall be in accordance with rules adopted by the department for determining the rights of the parties, whether or not the rules conform to common law or statutory rules of evidence and other technical rules of procedure.

(b) A full and complete record shall be kept of all proceedings in connection with a disputed claim. The testimony at any hearing upon a disputed claim need not be transcribed unless the disputed claim is further appealed.

(c) Each party to a hearing before an administrative law judge held under section 3 of this chapter shall be mailed a notice of the hearing at least ten (10) days before the date of the hearing specifying the **date**, place, and time of the hearing, ~~and~~ identifying the issues to be decided, **and providing complete information about the rules of evidence and standards of proof that the administrative law judge will use to determine the validity of the claim.**

(d) If a hearing so scheduled has not commenced within at least sixty (60) minutes of the time for which it was scheduled, then a party involved in the hearing may request a continuance of the hearing. Upon submission of a request for continuance of a hearing under circumstances provided in this section, the continuance shall be granted unless the party requesting the continuance was responsible for the delay in the commencement of the hearing as originally scheduled. In the latter instance, the continuance shall be discretionary with the administrative law judge. Testimony or other evidence introduced by a party at a hearing before an administrative law judge or the review

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board that another party to the hearing:

(1) is not prepared to meet; and

(2) by ordinary prudence could not be expected to have anticipated;

shall be good cause for continuance of the hearing and upon motion such continuance shall be granted.

SECTION 43. IC 22-4-18-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. The department of workforce development established under IC 22-4.1-2-1 shall administer job training and placement services ~~the skills 2016 training program established by IC 22-4-10.5-2~~; and unemployment insurance.

SECTION 44. IC 22-4-19-6, AS AMENDED BY P.L.108-2006, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) Each employing unit shall keep true and accurate records containing information the department considers necessary. These records are:

(1) open to inspection; and

(2) subject to being copied;

by an authorized representative of the department at any reasonable time and as often as may be necessary. The department, the review board, or an administrative law judge may require from any employing unit any verified or unverified report, with respect to persons employed by it, which is considered necessary for the effective administration of this article.

(b) Except as provided in subsections (d) and (f), information obtained or obtained from any person in the administration of this article and the records of the department relating to the unemployment tax ~~the skills 2016 assessment under IC 22-4-10.5-3~~; or the payment of benefits is confidential and may not be published or be open to public inspection in any manner revealing the individual's or the employing unit's identity, except in obedience to an order of a court or as provided in this section.

(c) A claimant **or an employer** at a hearing before an administrative law judge or the review board shall be supplied with information from the records referred to in this section to the extent necessary for the proper presentation of the subject matter of the appearance. The department may make the information necessary for a proper presentation of a subject matter before an administrative law judge or the review board available to an agency of the United States or an Indiana state agency.

(d) The department may release the following information:

(1) Summary statistical data may be released to the public.

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(2) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the Indiana economic development corporation only for the following purposes:

(A) The purpose of conducting a survey.

(B) The purpose of aiding the officers or employees of the Indiana economic development corporation in providing economic development assistance through program development, research, or other methods.

(C) Other purposes consistent with the goals of the Indiana economic development corporation and not inconsistent with those of the department.

(3) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the budget agency only for aiding the employees of the budget agency in forecasting tax revenues.

(4) Information obtained from any person in the administration of this article and the records of the department relating to the unemployment tax or the payment of benefits for use by the following governmental entities:

(A) department of state revenue; or

(B) state or local law enforcement agencies;

only if there is an agreement that the information will be kept confidential and used for legitimate governmental purposes.

(e) The department may make information available under subsection (d)(1), (d)(2), or (d)(3) only:

(1) if:

(A) data provided in summary form cannot be used to identify information relating to a specific employer or specific employee; or

(B) there is an agreement that the employer specific information released to the Indiana economic development corporation or the budget agency will be treated as confidential and will be released only in summary form that cannot be used to identify information relating to a specific employer or a specific employee; and

(2) after the cost of making the information available to the person requesting the information is paid under IC 5-14-3.

(f) In addition to the confidentiality provisions of subsection (b), the fact that a claim has been made under IC 22-4-15-1(c)(8) and any

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information furnished by the claimant or an agent to the department to verify a claim of domestic or family violence are confidential. Information concerning the claimant's current address or physical location shall not be disclosed to the employer or any other person. Disclosure is subject to the following additional restrictions:

(1) The claimant must be notified before any release of information.

(2) Any disclosure is subject to redaction of unnecessary identifying information, including the claimant's address.

(g) An employee:

(1) of the department who recklessly violates subsection (a), (c), (d), (e), or (f); or

(2) of any governmental entity listed in subsection (d)(4) who recklessly violates subsection (d)(4);

commits a Class B misdemeanor.

(h) An employee of the Indiana economic development corporation or the budget agency who violates subsection (d) or (e) commits a Class B misdemeanor.

(i) An employer or agent of an employer that becomes aware that a claim has been made under IC 22-4-15-1(c)(8) shall maintain that information as confidential.

(j) The department may charge a reasonable processing fee not to exceed two dollars (\$2) for each record that provides information about an individual's last known employer released in compliance with a court order under subsection (b).

SECTION 45. IC 22-4-19-7, AS AMENDED BY P.L.108-2006, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. In any case where an employing unit, or any officer, member, or agent thereof or any other person having possession of the records thereof, shall fail or refuse upon demand by the board, the department, the review board, or an administrative law judge, or the duly authorized representative of any of them, to produce or permit the examination or copying of any book, paper, account, record, or other data pertaining to payrolls or employment or ownership of interests or stock in any employing unit, or bearing upon the correctness of any contribution report, or the skills 2016 training assessment under ~~IC 22-4-10-5-3~~, or for the purpose of making a report as required by this article where none has been made, then and in that event the board, the department, the review board, or the administrative law judge, or the duly authorized representative of any of them, may by issuance of a subpoena require the attendance of such employing unit, or any officer, member, or agent thereof or any other person having possession

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1 of the records thereof, and take testimony with respect to any such
 2 matter and may require any such person to produce any books or
 3 records specified in such subpoena.

4 SECTION 46. IC 22-4-19-13 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) Where an
 6 employer makes an offer of employment directly to a claimant,
 7 promptly giving written notice to the department of such offer, or when
 8 any such employer makes such offer of employment in writing through
 9 the department, the commissioner, the deputy, or an authorized
 10 representative of the state or the United States employment service,
 11 which offer shall specify such claimant by name, and when such
 12 claimant thereafter fails to register subsequent to the receipt of such
 13 offer of employment by the department, the commissioner, the deputy,
 14 or an authorized representative of the state or the United States
 15 employment service, then a notice in writing shall promptly be mailed
 16 to such employer of such claimant's said failure to return and to
 17 register. If such claimant thereafter, in the claimant's benefit period,
 18 again registers or renews and continues the claimant's claim for
 19 benefits, such employer shall promptly be mailed notice of such fact in
 20 order that the employer may have an opportunity to renew and remake
 21 an offer of employment to such claimant.

22 (b) Upon the filing by an individual of an additional claim for
 23 benefits, a notice in writing or a carbon copy of such additional claim
 24 shall be mailed promptly to the base period employer or employers and
 25 to the employing unit, including an employer from whose employ the
 26 individual claims to have been last separated.

27 (c) Upon the filing by an individual of an initial claim for benefits,
 28 a notice in writing or a carbon copy of such initial claim shall be
 29 mailed promptly to **all base period employers and** the employing unit,
 30 including an employer from whose employ the individual claims to
 31 have been last separated. The computation of the benefit rights of such
 32 individual shall be made as promptly as possible and, if such claim is
 33 deemed valid, then a notice of benefit liability shall be mailed to each
 34 employer whose experience account is potentially chargeable with
 35 benefits to be paid to such individual. Such notice shall contain the
 36 date, the name and Social Security number of the individual, the ending
 37 date of the individual's base period, and the week ending date of the
 38 first week of the individual's benefit year. Such notice shall further
 39 contain information as to the proportion of benefits chargeable to the
 40 employer's experience account in ratio to the earnings of such
 41 individual from such employer and shall advise such employer of the
 42 employer's right to protest such claim and the payment of any benefits

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thereon and of the place and time within which protest must be made and the form and contents thereof. **An employer in an individual's base period is entitled to protest the individual's claim for benefits.**

(d) Whenever a determination is made with respect to the validity of any claim for benefits, or the eligibility of any claimant for benefits, which involves the cancellation of wage credits or benefit rights, the imposition of any disqualification, period of ineligibility or penalty, or the denial thereof, a notice in writing shall promptly be mailed to such claimant, **to each base period employer**, and to each employer directly involved or connected with the issue raised as to the validity of such claim, the eligibility of such claimant for benefits, or the imposition of a disqualification period of ineligibility or penalty, or the denial thereof. Such employer or such claimant may protest any such determination within such time limits and in such manner as provided in IC 22-4-17-2 and upon said protest shall be entitled to a hearing as provided in IC 22-4-17-2 and IC 22-4-17-3.

(e) Every employer shall be mailed a monthly report of benefit charges which shall contain an itemized statement showing the names of individuals to whom benefits were paid and charged to the experience account of such employer, the weeks with respect to which each such individual received benefits, the amount thereof, and the total amount of benefits charged to such employer's said account during the period covered by such report.

(f) Following the computation of rates of contribution for employers for each calendar year, each employer shall be mailed not later than ninety (90) days after the effective date of such rates a notice in writing setting out the employer's rate of contribution for such year, computed by the department as of the preceding June 30, together with sufficient information for such employer to determine and compute the amount of a voluntary payment required from such employer in order to qualify for and obtain a lower rate of contribution for such year and also advising such employer of the length of time within which or last date upon which said voluntary payment will be received or can be made.

SECTION 47. IC 22-4-20-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Whenever the commissioner shall consider any account or claim for contributions ~~or skills 2016 training assessments under IC 22-4-10.5-3, or both,~~ against an employer, and any penalty or interest due thereon, or any part thereof, to be uncollectible, written notification containing appropriate information shall be furnished to the attorney general by the commissioner setting forth the reasons therefor and the extent to which collection proceedings have been taken. The attorney general may

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1 review such notice and may undertake additional investigation as to the
 2 facts relating thereto, and shall thereupon certify to the commissioner
 3 an opinion as to the collectibility of such account or claim. If the
 4 attorney general consents to the cancellation of such claim for
 5 delinquent contributions, ~~or skills 2016 training assessments, or both,~~
 6 and any interest or penalty due thereon, the board may then cancel all
 7 or any part of such claim.

8 (b) In addition to the procedure for cancellation of claims for
 9 delinquent contributions ~~or skills 2016 training assessments, or both,~~
 10 set out in subsection (a), the board may cancel all or any part of a claim
 11 for delinquent contributions ~~or skills 2016 training assessments, or~~
 12 ~~both,~~ against an employer if all of the following conditions are met:

13 (1) The employer's account has been delinquent for at least seven
 14 (7) years.

15 (2) The commissioner has determined that the account is
 16 uncollectible and has recommended that the board cancel the
 17 claim for delinquent contributions. ~~or skills 2016 training~~
 18 ~~assessments, or both.~~

19 (c) When any such claim or any part thereof is cancelled by the
 20 board, there shall be placed in the files and records of the department,
 21 in the appropriate place for the same, a statement of the amount of
 22 contributions, ~~skills 2016 training assessments,~~ and any interest or
 23 penalty due thereon, and the action of the board taken with relation
 24 thereto, together with the reasons therefor.

25 SECTION 48. IC 22-4-29-2 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. In addition to all
 27 other powers granted to the commissioner by this article, the
 28 commissioner or the commissioner's authorized representatives shall
 29 have the power to make assessments against any employing unit which
 30 fails to pay contributions, interest, ~~skills 2016 training assessments~~
 31 ~~under IC 22-4-10.5-3,~~ or penalties as required by this article, or for
 32 additional contributions ~~and skills 2016 training assessments~~ due and
 33 unpaid, which assessment is considered prima facie correct. Such
 34 assessments shall consist of contributions ~~skills 2016 training~~
 35 ~~assessments under IC 22-4-10.5-3,~~ and any interest or penalties which
 36 may be due by reason of section 1 of this chapter. ~~or the skills 2016~~
 37 ~~training assessment and interest due under IC 22-4-10.5.~~ Such
 38 assessment must be made not later than four (4) calendar years
 39 subsequent to the date that said contributions, ~~skills 2016 training~~
 40 ~~assessments,~~ interest, or penalties would have become due, except that
 41 this limitation shall not apply to any contributions, ~~skills 2016 training~~
 42 ~~assessments,~~ interest, or penalties which should have been paid with

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1 respect to any incorrect report filed with the department which report
2 was known or should have been known to be incorrect by the
3 employing unit.

4 SECTION 49. IC 22-4-31-3 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. No injunction to
6 restrain or delay the collection of any contributions ~~skills 2016 training~~
7 ~~assessments under IC 22-4-10.5-3~~, or other amounts claimed to be due
8 under the provisions of this article shall be issued by any court.

9 SECTION 50. IC 22-4-32-16 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. In the event of any
11 distribution of any employer's assets pursuant to an order of any court
12 under the laws of this state including but not necessarily limited to any
13 receivership, assignment for benefit of creditors, adjudicated
14 insolvency, composition or similar proceeding, contributions ~~and skills~~
15 ~~2016 training assessments under IC 22-4-10.5-3~~ then or thereafter due
16 shall be paid in full prior to all other claims except claims for
17 remuneration.

18 SECTION 51. IC 22-4-32-17 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. No final report or
20 act of any executor, administrator, receiver, other fiduciary, or other
21 officer engaged in administering the assets of any employer subject to
22 the payment of contributions under this article and acting under the
23 authority and supervision of any court shall be allowed or approved by
24 the court unless such report or account shows and the court finds that
25 all contributions, interest, ~~skills 2016 training assessments under~~
26 ~~IC 22-4-10.5-3~~, and penalties imposed by this article have been paid
27 pursuant to this section, and that all contributions ~~and skills 2016~~
28 ~~training assessments~~ which may become due under this article are
29 secured by bond or deposit.

30 SECTION 52. IC 22-4-32-19, AS AMENDED BY P.L.108-2006,
31 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2009]: Sec. 19. (a) The department may grant an application
33 for adjustment or refund, make an adjustment or refund, or set off a
34 refund as follows:

- 35 (1) Not later than four (4) years after the date upon which any
36 contributions ~~skills 2016 training assessments under~~
37 ~~IC 22-4-10.5-3~~, or interest thereon were paid, an employing unit
38 which has paid such contributions ~~skills 2016 training~~
39 ~~assessments~~, or interest thereon may make application for an
40 adjustment or a refund of such contributions ~~skills 2016 training~~
41 ~~assessments~~, or an adjustment thereon in connection with
42 subsequent contribution payments. ~~or skills 2016 training~~

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~~assessments.~~ The department shall thereupon determine whether or not such contribution ~~or skills 2016 training assessment~~, or interest or any portion thereof, was erroneously paid or wrongfully assessed.

(2) The department may grant such application in whole or in part and may make an adjustment, without interest, in connection with subsequent contribution payments ~~or skills 2016 training assessments~~, or refund such amounts, without interest, from the fund. Adjustments or refund may be made on the commissioner's own initiative.

(3) Any adjustments or refunds of interest or penalties collected for contributions due under IC 22-4-10-1 shall be charged to and paid from the special employment and training services fund created by IC 22-4-25. ~~Any adjustments or refunds of interest or penalties collected for skills 2016 training assessments due under IC 22-4-10.5-3 shall be charged to and paid from the skills 2016 training fund established by IC 5-28-27-3.~~

(4) The department may set off any refund available to an employer under this section against any delinquent contributions, payments in lieu of contributions, ~~skills 2016 training assessments~~, and the interest and penalties, if any, related to the delinquent payments and assessments.

(b) Any decision by the department to:

- (1) grant an application for adjustment or refund;
- (2) make an adjustment or refund on its own initiative; or
- (3) set off a refund;

constitutes the initial determination referred to in section 4 of this chapter and is subject to hearing and review as provided in sections 1 through 15 of this chapter.

(c) If any assessment has become final by virtue of a decision of a liability administrative law judge with the result that no proceeding for judicial review as provided in this article was instituted, no refund or adjustment with respect to such assessment shall be made.

SECTION 53. IC 22-4-32-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20. The contributions, penalties, ~~skills 2016 training assessments under IC 22-4-10.5-3~~, and interest due from any employer under the provisions of this article from the time they shall be due shall be a personal liability of the employer to and for the benefit of the fund and the employment and training services administration fund.

SECTION 54. IC 22-4-32-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. (a) As used in this

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section:

(1) "Dissolution" refers to dissolution of a corporation under IC 23-1-45 through IC 23-1-48 **or dissolution under Indiana law of an association, a joint venture, an estate, a partnership, a limited liability partnership, a limited liability company, a joint stock company, or an insurance company (referred to as a "noncorporate entity" in this section).**

(2) "Liquidation" means the operation or act of winding up a corporation's **or entity's** affairs, when normal business activities have ceased, by settling its debts and realizing upon and distributing its assets.

(3) "Withdrawal" refers to the withdrawal of a foreign corporation from Indiana under IC 23-1-50.

(b) The officers and directors of a corporation effecting dissolution, liquidation, or withdrawal **or the appropriate individuals of a noncorporate entity** shall do the following:

(1) File all necessary documents with the department in a timely manner as required by this article.

(2) Make all payments of contributions ~~and skills 2016 training assessments under IC 22-4-10.5~~ to the department in a timely manner as required by this article.

(3) File with the department a form of notification within thirty (30) days of the adoption of a resolution or plan. The form of notification shall be prescribed by the department and may require information concerning:

(A) the corporation's **or noncorporate entity's** assets;

(B) the corporation's **or noncorporate entity's** liabilities;

(C) details of the plan or resolution;

(D) the names and addresses of corporate officers, directors, and shareholders **or the noncorporate entity's owners, members, or trustees;**

(E) a copy of the minutes of the shareholders' meeting **or the noncorporate entity's meeting** at which the plan or resolution was formally adopted; and

(F) such other information as the board may require.

The commissioner may accept, in lieu of the department's form of notification, a copy of Form 966 that the corporation filed with the Internal Revenue Service.

(c) Unless a clearance is issued under subsection (g), for a period of one (1) year following the filing of the form of notification with the department, the corporate officers and directors **of a corporation and the chief executive of a noncorporate entity** remain personally liable,

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subject to IC 23-1-35-1(e), for any acts or omissions that result in the distribution of corporate **or noncorporate entity** assets in violation of the interests of the state. An officer or director **of a corporation or a chief executive of a noncorporate entity** held liable for an unlawful distribution under this subsection is entitled to contribution:

(1) from every other director who voted for or assented to the distribution, subject to IC 23-1-35-1(e); and

(2) from each shareholder, **owner, member, or trustee** for the amount the shareholder, **owner, member, or trustee** accepted.

(d) The corporation's officers' and directors' **and the noncorporate entity's chief executive's** personal liability includes all contributions, ~~skills 2016 training assessments~~, penalties, interest, and fees associated with the collection of the liability due the department. In addition to the penalties provided elsewhere in this article, a penalty of up to thirty percent (30%) of the unpaid contributions and skills 2016 training assessments may be imposed on the corporate officers and directors **and the noncorporate entity's chief executive** for failure to take reasonable steps to set aside corporate assets to meet the liability due the department.

(e) If the department fails to begin a collection action against a corporate officer or director **or a noncorporate entity's chief executive** within one (1) year after the filing of a completed form of notification with the department, the personal liability of the corporate officer or director **or noncorporate entity's chief executive** expires. The filing of a substantially blank form of notification or a form containing misrepresentation of material facts does not constitute filing a form of notification for the purpose of determining the period of personal liability of the officers and directors of the corporation **or the chief executive of the noncorporate entity**.

(f) In addition to the remedies contained in this section, the department is entitled to pursue corporate assets that have been distributed to shareholders **or noncorporate entity assets that have been distributed to owners, members, or beneficiaries**, in violation of the interests of the state. The election to pursue one (1) remedy does not foreclose the state's option to pursue other legal remedies.

(g) The department may issue a clearance to a corporation **or noncorporate entity** effecting dissolution, liquidation, or withdrawal if:

(1) the:

(A) officers and directors of the corporation have; **or**

(B) **chief executive of the noncorporate entity has;**

met the requirements of subsection (b); and

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(2) request for the clearance is made in writing by the officers and directors of the corporation **or chief executive of the noncorporate entity** within thirty (30) days after the filing of the form of notification with the department.

(h) The issuance of a clearance by the department under subsection (g) releases the officers and directors **of a corporation and the chief executive of a noncorporate entity** from personal liability under this section.

SECTION 55. IC 22-4-32-24, AS AMENDED BY P.L.108-2006, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24. (a) This section applies to notices given under sections 4, 7, 8, and 9 of this chapter.

(b) As used in this section, "notices" includes mailings pertaining to:

- (1) the assessment of contributions, ~~skills 2016 training assessments under IC 22-4-10.5-3~~, penalties, and interest;
- (2) the transfer of charges from an employer's account;
- (3) successorships and related matters arising from successorships;
- (4) claims for refunds and adjustments;
- (5) violations under IC 22-4-11.5;
- (6) decisions; and
- (7) notices of intention to appeal or seek judicial review.

(c) If a notice under this chapter is served through the United States Postal Service, three (3) days must be added to a period that commences upon service of that notice.

(d) The filing of a document with the unemployment insurance appeals division or review board is complete on the earliest of the following dates that apply to the filing:

- (1) The date on which the document is delivered to the unemployment insurance appeals division or review board.
- (2) The date of the postmark on the envelope containing the document if the document is mailed to the unemployment insurance appeals division or review board by the United States Postal Service.
- (3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the unemployment insurance appeals division or review board by a private carrier.

SECTION 56. IC 22-4-33-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. Except as provided in IC 22-4-39, any agreement by an individual to waive, release or commute ~~his~~ **the individual's** rights to benefits or any other rights

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under this article is void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this article ~~or skills 2016 training assessments under IC 22-4-10.5-3~~ from the employer is void. No employer may make or require or accept any deduction from the remuneration of individuals in ~~his~~ **the employer's** employ to finance the employer's contributions ~~or skills 2016 training assessments under IC 22-4-10.5-3~~ required from ~~him~~, **the employer**, or require or accept any waiver by any individual in ~~his~~ **the employer's** employ of any right under this article.

SECTION 57. IC 22-4-37-3, AS AMENDED BY P.L.108-2006, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) Should:

(1) the Congress of the United States amend, repeal, or authorize the implementation of a demonstration project under 29 U.S.C. 49 et seq., 26 U.S.C. 3301 through 3311, 42 U.S.C. 301 et seq., or 26 U.S.C. 3101 through 3504, or any statute or statutes supplemental to or in lieu thereof or any part or parts of said statutes, or should any or all of said statutes or any part or parts thereof be held invalid, to the end and with such effect that appropriations of funds by the said Congress and grants thereof to the state for the payment of costs of administration of the department are or no longer shall be available for such purposes;

(2) the primary responsibility for the administration of 26 U.S.C. 3301 through 26 U.S.C. 3311 be transferred to the state as a demonstration project authorized by Congress; or

(3) employers in Indiana subject to the payment of tax under 26 U.S.C. 3301 through 3311 be granted full credit upon such tax for contributions or taxes paid to the department;

then, beginning with the effective date of such change in liability for payment of such federal tax and for each year thereafter, the normal contribution rate under this article shall be established by the department and may not exceed three and one-half percent (3.5%) per year of each employer's payroll subject to contribution. With respect to each employer having a rate of contribution for such year pursuant to terms of IC 22-4-11-2(b)(2)(A), IC 22-4-11-2(b)(2)(B), IC 22-4-11-2(c), IC 22-4-11-3, IC 22-4-11-3.3, **IC 22-4-11-3.5**, and IC 22-4-11.5, to the rate of contribution, as determined for such year in which such change occurs, shall be added not more than eight-tenths percent (0.8%) as prescribed by the department.

(b) The amount of the excess of tax for which such employer is or may become liable by reason of this section over the amount which

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such employer would pay or become liable for except for the provisions of this section, together with any interest or earnings thereon, shall be paid and transferred into the employment and training services administration fund to be disbursed and paid out under the same conditions and for the same purposes as is other money provided to be paid into such fund. If the commissioner shall determine that as of January 1 of any year there is an excess in said fund over the money and funds required to be disbursed therefrom for the purposes thereof for such year, then and in such cases an amount equal to such excess, as determined by the commissioner, shall be transferred to and become part of the unemployment insurance benefit fund, and such funds shall be deemed to be and are hereby appropriated for the purposes set out in this section.

SECTION 58. IC 22-4-43 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 43. Employer Notification Before Plant Closings and Mass Layoffs

Sec. 1. This chapter applies to plant closings and mass layoffs that are scheduled to occur after September 30, 2009.

Sec. 2. As used in this chapter, "Act" refers to the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq., as amended and in effect on January 1, 2009, including any regulations issued under the Act.

Sec. 3. The terms used in this chapter have the meaning set forth in the Act, unless given a different meaning in this chapter or in rules adopted under the authority of this chapter.

Sec. 4. (a) An employer shall provide notice under this chapter in the same circumstances, in the same manner, and to the same entities as an employer that is required to provide notice under the Act.

(b) An employer is exempt from providing notice under this chapter in the same circumstances in which an employer is exempt from providing notice under the Act.

Sec. 5. (a) An employer required to provide notice under this chapter shall serve the notice not later than sixty (60) days before the plant closing or mass layoff to which the notice applies.

(b) An employer required to provide notice under this chapter shall provide the notice to all the following:

- (1) Each representative of the affected employees at the time of the notice. If the affected employees do not have a representative at the time of the notice, the employer shall**

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1 provide notice to each affected employee.

2 (2) The department.

3 (3) The chief elected official of the unit of local government
4 within which the closing or layoff is to occur.

5 (4) Any other person that federal or state law, rule, or
6 regulation requires receive notice of a plant closing or mass
7 layoff.

8 (c) The notice required under this chapter must contain at least
9 the following information:

10 (1) The name and address of the employment site where the
11 plant closing or mass layoff will occur.

12 (2) The name and telephone number of an official of the
13 employer who can be contacted for further information.

14 (3) A statement as to whether the planned employment loss is
15 expected to be permanent or temporary and, if an entire plant
16 is to be closed, a statement to that effect.

17 (4) A statement of the reasons for the plant closing or mass
18 layoff.

19 (5) The expected date of the first employment loss and the
20 anticipated schedule for making employment terminations,
21 layoffs, and reductions in hours of work.

22 (6) The name, Social Security number, and job title of each
23 affected employee.

24 (7) The number of affected employees in each job
25 classification.

26 (8) A statement as to the rights of an affected employee
27 concerning wages, severance pay, benefits, pensions, bumping
28 rights, and other terms of employment that relate to the
29 termination, layoff, or reduction in the number of hours of
30 work, including any rights based on a collective bargaining
31 agreement or an existing employer policy.

32 (9) The name of each representative of the affected employees,
33 including the name and address of the chief elected officer of
34 each representative.

35 (10) A statement as to the employment available to affected
36 employees at any other site operated by the employer,
37 including information regarding the benefits, pay, other terms
38 and conditions of the employment, and the location of the
39 other employment.

40 (11) Any other information requested by the department.

41 (d) Notices to the department must be in writing on a form
42 prescribed by the commissioner and submitted to the department

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1 online using a web site designated by the department to receive the
 2 notices. The commissioner shall make the form available for use by
 3 employers not later than September 30, 2009.

4 Sec. 6. The department shall compel compliance with this
 5 chapter by requesting the attorney general or the prosecuting
 6 attorney of the county within which a plant closing or mass layoff
 7 is occurring to file an action in the name of the state for injunctive
 8 relief against an employer that fails to provide the notice required
 9 by this chapter.

10 Sec. 7. (a) Except as provided in subsection (b) or when
 11 disclosure is required by an order of a court, any information
 12 obtained under this chapter by the department or a unit of local
 13 government is confidential, may not be published, and is not open
 14 to public inspection in any manner that discloses an affected
 15 employee's identity.

16 (b) The department may provide a notice or any information
 17 obtained under this chapter to any of the following in the regional
 18 workforce area (as defined in IC 22-4.5-2-9.5) where a plant closing
 19 or mass layoff will occur in order to provide employment, training,
 20 and other services to affected employees:

- 21 (1) A regional operator (as defined in IC 22-4.5-2-9.3).
- 22 (2) A regional workforce board (as defined in IC 22-4.5-2-9.7).
- 23 (3) A service provider (as the term is used in IC 22-4.5-7).
- 24 (4) A provider of direct client services (as the term is used in
- 25 IC 22-4.5-7).

26 SECTION 59. IC 22-4.1-4-4 IS ADDED TO THE INDIANA CODE
 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 28 1, 2009]: Sec. 4. (a) This section applies after December 31, 2009.

29 (b) As used in this section, "contractor" means:

- 30 (1) a sole proprietor;
- 31 (2) a partnership;
- 32 (3) a firm;
- 33 (4) a corporation;
- 34 (5) a limited liability company;
- 35 (6) an association; or
- 36 (7) another legal entity;

37 that engages in construction and is authorized by law to do
 38 business in Indiana. The term includes a general contractor, a
 39 subcontractor, and a lower tiered contractor. The term does not
 40 include the state, the federal government, or a political subdivision.

41 (c) The department shall cooperate with the:

- 42 (1) department of labor created by IC 22-1-1-1;

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1 (2) department of state revenue established by IC 6-8.1-2-1;
2 and

3 (3) worker's compensation board of Indiana created by
4 IC 22-3-1-1(a);

5 by sharing information concerning any suspected improper
6 classification by a contractor of an individual as an independent
7 contractor (as described in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

8 (d) For purposes of IC 5-14-3-4, information shared under this
9 section is confidential, may not be published, and is not open to
10 public inspection.

11 (e) An officer or employee of the department who knowingly or
12 intentionally discloses information that is confidential under this
13 section commits a Class A misdemeanor.

14 SECTION 60. THE FOLLOWING ARE REPEALED [EFFECTIVE
15 JULY 1, 2009]: IC 5-28-27; IC 22-4-5-3; IC 22-4-10.5; IC 22-4-12-2.1;
16 IC 22-4-15-8; IC 22-4-17-10.

17 SECTION 61. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1379, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STILWELL, Chair

Committee Vote: yeas 6, nays 5.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1379, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

CRAWFORD, Chair

Committee Vote: yeas 16, nays 5.

Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 65(b), I hereby report that Engrossed House Bill 1379, currently assigned to the Committee on Pensions and Labor, be reassigned to the Committee on Tax and Fiscal Policy.

LONG

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1379, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:
"SECTION 1. IC 6-8.1-3-21.4 IS ADDED TO THE INDIANA

EH 1379—LS 7558/DI 96+



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CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2009]: **Sec. 21.4. (a) This section applies after December 31, 2009.**

(b) As used in this section, "contractor" means:

- (1) a sole proprietor;**
- (2) a partnership;**
- (3) a firm;**
- (4) a corporation;**
- (5) a limited liability company;**
- (6) an association; or**
- (7) another legal entity;**

that engages in construction and is authorized by law to do business in Indiana. The term includes a general contractor, a subcontractor, and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.

(c) The department shall cooperate with the:

- (1) department of labor created by IC 22-1-1-1;**
- (2) worker's compensation board of Indiana created by IC 22-3-1-1(a); and**
- (3) department of workforce development established by IC 22-4.1-2-1;**

by sharing information concerning any suspected improper classification by a contractor of an individual as an independent contractor (as described in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

(d) For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

(e) An officer or employee of the department who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

SECTION 2. IC 22-1-1-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 22. (a) This section applies after December 31, 2009.

(b) As used in this section, "contractor" means:

- (1) a sole proprietor;**
- (2) a partnership;**
- (3) a firm;**
- (4) a corporation;**
- (5) a limited liability company;**
- (6) an association; or**
- (7) another legal entity;**

that engages in construction and is authorized by law to do

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business in Indiana. The term includes a general contractor, a subcontractor, and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.

(c) The department of labor shall cooperate with the:

- (1) department of workforce development established by IC 22-4.1-2-1;
- (2) department of state revenue established by IC 6-8.1-2-1; and
- (3) worker's compensation board of Indiana created by IC 22-3-1-1(a);

by sharing information concerning any suspected improper classification by a contractor of an individual as an independent contractor (as described in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

(d) For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

(e) An officer or employee of the department of labor who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

SECTION 3. IC 22-3-1-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) This section applies after December 31, 2009.

(b) As used in this section, "contractor" means:

- (1) a sole proprietor;
- (2) a partnership;
- (3) a firm;
- (4) a corporation;
- (5) a limited liability company;
- (6) an association; or
- (7) another legal entity;

that engages in construction and is authorized by law to do business in Indiana. The term includes a general contractor, a subcontractor, and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.

(c) The worker's compensation board of Indiana shall cooperate with the:

- (1) department of state revenue established by IC 6-8.1-2-1;
- (2) department of labor created by IC 22-1-1-1; and
- (3) department of workforce development established by IC 22-4.1-2-1;

by sharing information concerning any suspected improper classification by a contractor of an individual as an independent

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contractor (as described in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

(d) For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

(e) An officer or employee of the worker's compensation board of Indiana who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

SECTION 4. IC 22-4-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. ~~Except as provided in IC 22-4-5-3,~~ "Week" means a calendar week.

SECTION 5. IC 22-4-2-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 32. "Payment in lieu of contributions" means the required reimbursements by employers of benefits paid attributable to services performed for such employers which are liable to make these payments as provided in IC 1971, 22-4-10-1. ~~of this article.~~ These payments shall equal the full amount of regular benefits and ~~one-half (1/2) of the extended benefits~~ **part of benefits not reimbursed by the federal government under the Federal-State Extended Unemployment Compensation Act of 1970** paid ~~as that~~ are attributable to services in the employ of such liable employers.

SECTION 6. IC 22-4-2-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 34. (a) With respect to benefits for weeks of unemployment beginning after August 13, 1981, "extended benefit period" means a period which begins with the third week after a week for which there is a state "on" indicator and ends with **the later of the following:**

- (1) The third week after the first week for which there is a state "off" indicator. ~~or~~
- (2) The thirteenth consecutive week of such period.

(b) However, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(c) There is a state "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

- (1) equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period

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ending in each of the preceding two (2) calendar years; and

(2) equaled or exceeded

(A) with respect to benefits for weeks of unemployment beginning before September 25, 1982, four percent (4%); and

(B) with respect to benefits for weeks of unemployment beginning after September 25, 1982, five percent (5%).

However, with respect to benefits for weeks of unemployment beginning after December 31, 1977, the determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if it did not contain subdivision (1) and if the insured unemployment rate in subdivision (2) were:

(A) with respect to benefits for weeks of unemployment beginning before September 25, 1982, five percent (5%); and

(B) with respect to benefits for weeks of unemployment beginning after September 25, 1982, is at least six percent (6%).

Any week for which there would otherwise be a state "on" indicator shall continue to be such a week and may not be determined to be a week for which there is a state "off" indicator.

(d) There is a state "off" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(1) was less than one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two (2) calendar years; or

(2) was less than:

(A) with respect to benefits for weeks of unemployment beginning before September 25, 1982, four percent (4%); and

(B) with respect to benefits for weeks of unemployment beginning after September 25, 1982, five percent (5%).

the requirements of subsection (c) have not been met.

(e) With respect to benefits for weeks of unemployment beginning after August 13, 1981, "rate of insured unemployment," for purposes of subsections (e) and (f), means the percentage derived by dividing:

(1) the average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent 13 consecutive week period (as determined by the board on the basis of this state's reports to the United States Secretary of Labor); by

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(2) the average monthly employment covered under this article for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such 13-week period.

(f) "Regular benefits" means benefits payable to an individual under this article or under the law of any other state (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. 8501 through 8525) other than extended benefits. "Additional benefits" means benefits other than extended benefits and which are totally financed by a state payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law. If extended compensation is payable to an individual by this state and additional compensation is payable to ~~him~~ **the individual** for the same week by any state, the individual may elect which of the two (2) types of compensation to claim.

(g) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. 8501 through 8525) payable to an individual under the provisions of this article for weeks of unemployment in the individual's "eligibility period". Pursuant to Section 3304 of the Internal Revenue Code extended benefits are not payable to interstate claimants filing claims in an agent state which is not in an extended benefit period, against the liable state of Indiana when the state of Indiana is in an extended benefit period. This prohibition does not apply to the first two (2) weeks claimed that would, but for this prohibition, otherwise be payable. However, only one such two (2) week period will be granted on an extended claim. Notwithstanding any other provisions of this chapter, with respect to benefits for weeks of unemployment beginning after October 31, 1981, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would, but for this clause, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(h) "Eligibility period" of an individual means the period consisting of the weeks in the individual's benefit period which begin in an extended benefit period and, if the individual's benefit period ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

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(i) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(1) has received, prior to such week, all of the regular benefits including dependent's allowances that were available to the individual under this article or under the law of any other state (including benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. 8501 through 8525) in the individual's current benefit period that includes such week. However, for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to the individual although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit period or although a nonmonetary decision denying benefits is pending, the individual may subsequently be determined to be entitled to added regular benefits;

(2) may be entitled to regular benefits with respect to future weeks of unemployment but such benefits are not payable with respect to such week of unemployment by reason of seasonal limitations in any state unemployment insurance law; or

(3) having had the individual's benefit period expire prior to such week, has no, or insufficient, wages on the basis of which the individual could establish a new benefit period that would include such week;

and has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Act of 1974, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, ~~he~~ **the individual** is considered an exhaustee.

(j) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under Section 3304 of the Internal Revenue Code.

SECTION 7. IC 22-4-4-2, AS AMENDED BY P.L.98-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as otherwise provided in this section, "wages" means all remuneration as defined in section 1 of this chapter paid to an individual by an employer, remuneration received as tips or

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gratuities in accordance with Sections 3301 and 3102 et seq. of the Internal Revenue Code, and includes all remuneration considered as wages under Sections 3301 and 3102 et seq. of the Internal Revenue Code. However, the term shall not include any amounts paid as compensation for services specifically excluded by IC 22-4-8-3 or IC 22-4-8-3.5 from the definition of employment as defined in IC 22-4-8-1 and IC 22-4-8-2. The term shall include, but not be limited to, any payments made by an employer to an employee or former employee, under order of the National Labor Relations Board, or a successor thereto, or agency named to perform the duties thereof, as additional pay, back pay, or for loss of employment, or any such payments made in accordance with an agreement made and entered into by an employer, a union, and the National Labor Relations Board.

(b) The term "wages" shall not include the following:

(1) That part of remuneration which, after remuneration equal to:

(A) seven thousand dollars (\$7,000), has been paid in a calendar year to an individual by an employer or his the employer's predecessor with respect to employment during any calendar year ~~subsequent to that begins after~~ December 31, 1982, and before January 1, 2010; or

(B) ten thousand dollars (\$10,000), has been paid in a calendar year to an individual by an employer or the employer's predecessor for employment during a calendar year that begins after December 31, 2009;

unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision, the term "employment" shall include service constituting employment under any employment security law of any state or of the federal government. However, nothing in this subdivision shall be taken as an approval or disapproval of any related federal legislation.

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment) made to, or on behalf of, an individual or any of the individual's dependents under a plan or system established by an employer which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of:

(A) retirement;

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- (B) sickness or accident disability;
- (C) medical or hospitalization expenses in connection with sickness or accident disability; or
- (D) death.

(3) The amount of any payment made by an employer to an individual performing service for it (including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment) on account of retirement.

(4) The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability made by an employer to, or on behalf of, an individual performing services for it and after the expiration of six (6) calendar months following the last calendar month in which the individual performed services for such employer.

(5) The amount of any payment made by an employer to, or on behalf of, an individual performing services for it or to the individual's beneficiary:

(A) from or to a trust exempt from tax under Section 401(a) of the Internal Revenue Code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust; or

(B) under or to an annuity plan which, at the time of such payments, meets the requirements of Section 401(a)(3), 401(a)(4), 401(a)(5), and 401(a)(6) of the Internal Revenue Code.

(6) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business.

(7) The amount of any payment (other than vacation or sick pay) made to an individual after the month in which the individual attains the age of sixty-five (65) if the individual did not perform services for the employer in the period for which such payment is made.

(8) The payment by an employer (without deduction from the remuneration of the employee) of the tax imposed upon an employee under Sections 3101 et seq. of the Internal Revenue Code (Federal Insurance Contributions Act).

SECTION 8. IC 22-4-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. ~~(a) For calendar quarters beginning on and after April 1, 1979, and before April 1, 1984, "wage~~

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credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed three thousand six hundred sixty-six dollars (\$3,666) and may not include payments specified in section 2(b) of this chapter.

(b) For calendar quarters beginning on and after April 1, 1984, and before April 1, 1985, "wage credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed three thousand nine hundred twenty-six dollars (\$3,926) and may not include payments specified in section 2(b) of this chapter.

(c) For calendar quarters beginning on and after April 1, 1985, and before January 1, 1991, "wage credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed four thousand one hundred eighty-six dollars (\$4,186) and may not include payments specified in section 2(b) of this chapter.

(d) For calendar quarters beginning on and after January 1, 1991, and before July 1, 1995, "wage credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed four thousand eight hundred ten dollars (\$4,810) and may not include payments specified in section 2(b) of this chapter.

(e) For calendar quarters beginning on and after July 1, 1995, and before July 1, 1997, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand dollars (\$5,000) and may not include payments specified in section 2(b) of this chapter.

(f) For calendar quarters beginning on and after July 1, 1997, and before July 1, 1998, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand four hundred dollars (\$5,400) and may not include payments specified in section 2(b) of this chapter.

(g) For calendar quarters beginning on and after July 1, 1998, and before July 1, 1999, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand six hundred dollars (\$5,600) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(h) For calendar quarters beginning on and after July 1, 1999, and

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before July 1, 2000, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand eight hundred dollars (\$5,800) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(i) For calendar quarters beginning on and after July 1, 2000, and before July 1, 2001, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed six thousand seven hundred dollars (\$6,700) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(j) For calendar quarters beginning on and after July 1, 2001, and before July 1, 2002, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed seven thousand three hundred dollars (\$7,300) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(k) For calendar quarters beginning on and after July 1, 2002, and before July 1, 2003, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed seven thousand nine hundred dollars (\$7,900) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(l) For calendar quarters beginning on and after July 1, 2003, and before July 1, 2004, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed eight thousand two hundred sixteen dollars (\$8,216) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(m) For calendar quarters beginning on and after July 1, 2004, and before July 1, 2005, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration

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received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed eight thousand seven hundred thirty-three dollars (\$8,733) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(n) (a) For calendar quarters beginning on and after July 1, 2005, **and before January 1, 2010**, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed nine thousand two hundred fifty dollars (\$9,250) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(b) For calendar quarters beginning on and after January 1, 2010, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed eleven thousand dollars (\$11,000) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

SECTION 9. IC 22-4-5-1, AS AMENDED BY P.L.138-2008, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) "Deductible income" wherever used in this article, means income deductible from the weekly benefit amount of an individual in any week, and shall include, but shall not be limited to:

- (1) remuneration for services from employing units, whether or not such remuneration is subject to contribution under this article; **except as provided in subsection (c);**
- (2) dismissal pay;
- (3) vacation pay;
- (4) pay for idle time;
- (5) holiday pay;
- (6) sick pay;
- (7) traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual;
- (8) net earnings from self-employment;
- (9) payments in lieu of compensation for services;
- (10) awards by the National Labor Relations Board of additional pay, back pay, or for loss of employment, or any such payments made under an agreement entered into by an employer, a union, and the National Labor Relations Board;

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(11) payments made to an individual by an employing unit pursuant to the terms of the Fair Labor Standards Act (Federal Wage and Hour Law, 29 U.S.C. 201 et seq.);

(12) ~~for a week in which a payment is actually received by an individual;~~ payments made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure; or

(13) ~~except as provided in subsection (c)(2), the part of a payment made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure if that part is attributable to a week and the week:~~

~~(A) occurs after an individual receives the payment; and~~

~~(B) was used under the terms of a written agreement to compute the payment.~~

(13) supplemental unemployment insurance benefits made under a valid negotiated contract or agreement.

(b) Deductible income shall not include the first three dollars (\$3), or twenty percent (20%) of the claimant's weekly benefit amount rounded to the next lowest dollar, whichever is the larger, of remuneration paid or payable to an individual with respect to any week by other than the individual's base period employer or employers.

(c) ~~For the purpose of deductible income only, remuneration for services from employing units does not include:~~

~~(1) bonuses, gifts, or prizes awarded to an employee by an employing unit; or~~

~~(2) compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure, without regard to how the compensation is characterized by the contract or agreement.~~

~~(d) Deductible income does not include a supplemental unemployment insurance benefit made under a valid negotiated contract or agreement.~~

SECTION 10. IC 22-4-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Payments in lieu of a vacation awarded to an employee by an employing unit shall be considered as deductible income in and with respect to the week in which the same is actually paid. The payment of accrued vacation pay, dismissal pay, or severance pay to an individual separated from employment by an employing unit shall be allocated to the period of time for which such payment is made immediately following the date of separation, and an individual receiving such payments shall not be deemed unemployed with respect to a week during which such

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allocated deductible income equals or exceeds the weekly benefit amount of ~~his~~ **the individual's** claim. Pay for idle time; sick pay; traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual; earnings from self-employment; awards by the National Labor Relations Board of additional pay, back pay, or for loss of employment; or any such payments made under an agreement entered into by an employer, a union, and the National Labor Relations Board; and payments to an employee by an employing unit made pursuant to the terms and provisions of the Fair Labor Standards Act shall be deemed to constitute deductible income with respect to the week or weeks for which such payments are made. However, if such payments made pursuant to the provisions of the National Labor Relations Act or of the Fair Labor Standards Act or through agreement with a union are not, by the terms of the order or agreement under which said payments are made, allocated to any designated week or weeks, then, and in such cases, such payments shall be considered as deductible income in and with respect to the week in which the same is actually paid.

(b) Holiday pay which is paid not later than the normal pay day for the pay period in which the holiday occurred shall be deemed to constitute deductible income with respect to the week for which such payments are made. Holiday pay which is paid after the normal pay day for the pay period in which the holiday occurred shall be considered as deductible income in and with respect to the week in which the same is actually paid.

(c) ~~Payment of vacation pay, if made prior to the vacation period or not later than the normal pay day for the pay period in which the vacation was taken, shall be deemed deductible income with respect to the week or weeks falling within such vacation period for which vacation payment is made. Payment of vacation pay made subsequent to the normal pay day for the pay period in which the vacation was taken shall be deemed deductible income with respect to the week in which such payment is made.~~

SECTION 11. IC 22-4-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) "Employing unit" means any individual or type of organization, including any partnership, **limited liability partnership**, association, trust, joint venture, estate, **limited liability company**, joint stock company, insurance company, corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor to any of the foregoing, or the legal representative of a deceased person, which at any time has had one (1) or more individuals performing services for

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it within this state for remuneration or under any contract of hire, written or oral, expressed or implied. Where any such individual performing services hires a helper to assist in performing such services, each such helper shall be deemed to be performing services for such employing unit for all purposes of this article, whether such helper was hired or paid directly by the employing unit or by the individual, provided the employing unit has actual or constructive knowledge of the services.

(b) All such individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all purposes of this article.

SECTION 12. IC 22-4-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) If two (2) or more related **entities, including partnerships, limited liability partnerships, associations, trusts, joint ventures, estates, joint stock companies, limited liability companies, insurance companies, or corporations, or a combination of these entities**, concurrently employ the same individual and compensate that individual through a common paymaster that is one (1) of the ~~corporations~~, **entities**, those ~~corporations~~ **entities** shall be considered to be one (1) employing unit.

(b) For purposes of this section, ~~corporations~~ **entities** shall be considered related ~~corporations~~ **entities** if they satisfy any one (1) of the following tests at any time during the calendar quarter:

(1) The corporations are members of a "controlled group of corporations", as defined in Section 1563 of the Internal Revenue Code (generally parent-subsidary or brother-sister controlled groups), or would be members if Section 1563(a)(4) and 1563(b) of the Internal Revenue Code did not apply and if the phrase "more than fifty percent (50%)" were substituted for the phrase "at least eighty percent (80%)" wherever it appears in Section 1563(a) of the Internal Revenue Code.

(2) In the case of ~~a corporation~~ **an entity** that does not issue stock, either fifty percent (50%) or more of the members of one (1) ~~corporation's entity's~~ board of directors (or other governing body) are members of the other ~~corporation's entity's~~ board of directors (or other governing body), or the holders of fifty percent (50%) or more of the voting power to select ~~such~~ **these** members are concurrently the holders of fifty percent (50%) or more of that power with respect to the other ~~corporation~~, **entity**.

(3) Fifty percent (50%) or more of one (1) ~~corporation's entity's~~ officers are concurrently officers of the other ~~corporation~~, **entity**.

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(4) Thirty percent (30%) or more of one (1) ~~corporation's entity's~~ employees are concurrently employees of the other ~~corporation~~ entity.

(5) The entities are part of an affiliated group, as defined in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%).

~~Corporations~~ **Entities** shall be considered related ~~corporations~~ entities for an entire calendar quarter if they satisfy the requirements of this subsection at any time during the calendar quarter.

(c) For purposes of this section, "concurrent employment" means the contemporaneous existence of an employment relationship between an individual and two (2) or more ~~corporations~~ entities.

SECTION 13. IC 22-4-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) As used in this article, "seasonal employer" means an employer that, because of climatic conditions or the seasonal nature of a product or service, customarily operates all or a portion of its business only during a regularly recurring period or periods of less than ~~twenty-six (26)~~ **forty-two (42)** weeks for all seasonal periods during a calendar year. ~~An employer may be a seasonal employer with respect to a portion of its business only if that portion, under the usual and customary practice in the industry, is identifiable as a functionally distinct operation.~~

(b) As used in this article, "seasonal determination" means a decision made by the department after application on prescribed forms as to the seasonal nature of the employer, the normal seasonal period or periods of the employer, and the seasonal operation of the employer covered by such determination.

(c) As used in this article, "seasonal operation" means the part of an employer's workforce that is laid off on a regular or annual basis.

(d) As used in this article, "seasonal period" means the period or periods during which a seasonal employer regularly operates its seasonal operation.

(e) As used in this article, "seasonal event" means:

- (1) any regularly occurring climatic condition that requires an employer to temporarily cease operations;
- (2) any regularly scheduled cessation of operations, if the date and duration of the cessation can be predicted with reasonable certainty; or
- (3) any event that regularly and predictably causes the

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cessation of operations.

SECTION 14. IC 22-4-8-1, AS AMENDED BY P.L.108-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) "Employment," subject to the other provisions of this section, means service, including service in interstate commerce performed for remuneration or under any contract of hire, written or oral, expressed or implied.

(b) Services performed by an individual for remuneration shall be deemed to be employment subject to this article irrespective of whether the common-law relationship of master and servant exists, unless and until all the following conditions are shown to the satisfaction of the department:

- (1) The individual has been and will continue to be free from control and direction in connection with the performance of such service, both under the individual's contract of service and in fact.
- (2) The service is performed outside the usual course of the business for which the service is performed.
- (3) The individual:
 - (A) is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed; or
 - (B) is a sales agent who receives remuneration solely upon a commission basis and who is the master of the individual's own time and effort.

(c) The term also includes the following:

- (1) Services performed for remuneration by:
 - (A) an officer of a corporation in the officer's official corporate capacity; **or**
 - (B) **a chief executive of a noncorporate entity, including any partnership, limited liability partnership, association, trust, joint venture, estate, limited liability company, joint stock company, or insurance company, in the executive's official capacity for the entity.**
- (2) Services performed for remuneration for any employing unit by an individual:
 - (A) as an agent-driver or commission-driver engaged in distributing products, including but not limited to, meat, vegetables, fruit, bakery, beverages, or laundry or dry-cleaning services for the individual's principal; or
 - (B) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to,

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the individual's principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(d) For purposes of subsection (c)(2), the term "employment" shall include services described in subsection (c)(2)(A) and (c)(2)(B) only if all the following conditions are met:

- (1) The contract of service contemplates that substantially all of the services are to be performed personally by such individual.
- (2) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation).
- (3) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

SECTION 15. IC 22-4-8-2, AS AMENDED BY P.L.3-2008, SECTION 158, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. The term "employment" shall include:

(a) An individual's entire service performed within or both within and without Indiana if the service is localized in Indiana.

(b) An individual's entire service performed within or both within and without Indiana if the service is not localized in any state, but some of the service is performed in Indiana and:

- (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled is in Indiana;
- (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in Indiana; or
- (3) such service is not covered under the unemployment compensation law of any other state or Canada, and the place from which the service is directed or controlled is in Indiana.

(c) Services not covered under subsections (a) and (b) and performed entirely without Indiana, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the United States, shall be deemed to be employment subject to this article if the department approves the election of the individual performing such services and the employing unit for which such services are performed, that the

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entire services of such individual shall be deemed to be employment subject to this article.

(d) Services covered by an election duly approved by the department, in accordance with an agreement pursuant to IC 22-4-22-1 through IC 22-4-22-5, shall be deemed to be employment during the effective period of such election.

(e) Service shall be deemed to be localized within a state if:

- (1) the service is performed entirely within such state; or
- (2) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, such as is temporary or transitory in nature or consists of isolated transactions.

(f) Periods of vacation with pay or leave with pay, other than military leave granted or given to an individual by an employer.

(g) Notwithstanding any other provisions of this article, the term employment shall also include all services performed by an officer or member of the crew of an American vessel or American aircraft, on or in connection with such vessel or such aircraft, provided that the operating office, from which the operations of such vessel operating on navigable waters within or the operations of such aircraft within, or the operation of such vessel or aircraft within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within this state.

(h) Services performed for an employer which is subject to contribution solely by reason of liability for any federal tax against which credit may be taken for contributions paid into a state unemployment compensation fund.

(i) The following:

(1) Service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or eligible postsecondary educational institution located in Indiana.

(2) Service performed after December 31, 1977, by an individual in the employ of this state or a political subdivision of the state or any instrumentality of the state or a political subdivision, or any instrumentality which is wholly owned by the state and one (1) or more other states or political subdivisions, if the service is excluded from "employment" as defined in Section 3306(c)(7) of the Federal Unemployment Tax Act (26 U.S.C. 3306(c)(7)). However, service performed after December 31, 1977, as the following is excluded:

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- (A) An elected official.
- (B) A member of a legislative body or of the judiciary of a state or political subdivision.
- (C) A member of the state national guard or air national guard.
- (D) An employee serving on a temporary basis in the case of fire, snow, storm, earthquake, flood, or similar emergency.
- (E) An individual in a position which, under the laws of the state, is designated as:
 - (i) a major nontenured policymaking or advisory position; or
 - (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week.
- (3) Service performed after March 31, 1981, by an individual whose service is part of an unemployment work relief or work training program assisted or financed in whole by any federal agency or an agency of this state or a political subdivision of this state, by an individual receiving such work relief or work training is excluded.
- (j) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met:
 - (1) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act (26 U.S.C. 3306(c)(8)).
 - (2) The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.
 - (3) For the purposes of subdivisions (1) and (2), the term "employment" does not apply to service performed as follows:
 - (A) In the employ of:
 - (i) a church or convention or association of churches; or
 - (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.
 - (B) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.
 - (C) Before January 1, 1978, in the employ of a school which is not an eligible postsecondary educational institution.

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(D) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work.

(E) As part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.

(k) The service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subsection (a), (b), or (c) or the parallel provisions of another state's law), if **the following apply:**

(1) The employer's principal place of business in the United States is located in this state. ~~or~~

(2) The employer has no place of business in the United States, but **the employer is:**

(A) ~~The employer~~ is an individual who is a resident of this state; ~~or~~

(B) ~~The employer~~ is a corporation which is organized under the laws of this state; ~~or~~

(C) ~~The employer~~ is a partnership, **limited liability partnership**, or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state; or

(D) an association, a joint venture, an estate, a limited liability company, a joint stock company, or an insurance company (referred to as an "entity" in this clause), and either:

(i) the entity is organized under the laws of this state; or

(ii) the number of owners, members, or beneficiaries who are residents of this state is greater than the number who are residents of any one (1) other state.

(3) None of the criteria of subdivisions (1) and (2) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

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(4) An "American employer," for purposes of this subsection, means:

- (A) an individual who is a resident of the United States; ~~or~~
- (B) a partnership **or limited liability partnership**, if two-thirds (2/3) or more of the partners are residents of the United States; ~~or~~
- (C) a trust, if all of the trustees are residents of the United States; or
- (D) a corporation, **an association, a joint venture, an estate, a limited liability company, a joint stock company, or an insurance company** organized **or established** under the laws of the United States or of any state.

(l) The term "employment" also includes the following:

(1) Service performed after December 31, 1977, by an individual in agricultural labor (as defined in section 3(c) of this chapter) when the service is performed for an employing unit which:

- (A) during any calendar quarter in either the current or preceding calendar year paid cash remuneration of twenty thousand dollars (\$20,000) or more to individuals employed in agricultural labor; or
- (B) for some portion of a day in each of twenty (20) different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten (10) or more individuals, regardless of whether they were employed at the same time.

(2) For the purposes of this subsection, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

- (A) if the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and
- (B) if the individual is not an employee of another person within the meaning of section 1 of this chapter.

(3) For the purposes of subdivision (1), in the case of an individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subdivision (2):

- (A) the other person and not the crew leader shall be treated as

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the employer of the individual; and

(B) the other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader (either on the individual's own behalf or on behalf of the other person) for the service in agricultural labor performed for the other person.

(4) For the purposes of this subsection, the term "crew leader" means an individual who:

(A) furnishes individuals to perform service in agricultural labor for any other person;

(B) pays (either on the individual's own behalf or on behalf of the other person) the agricultural laborers furnished by the individual for the service in agricultural labor performed by them; and

(C) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person.

(m) The term "employment" includes domestic service after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars (\$1,000) or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in the domestic service in any calendar quarter.

SECTION 16. IC 22-4-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) As used in this article, "seasonal employment" means services performed for a seasonal employer during the seasonal period in the employer's seasonal operations, after the effective date of a seasonal determination with respect to the seasonal employer.

(b) As used in this article, "seasonal worker" means an individual who:

(1) has been employed by a seasonal employer in seasonal employment; ~~during a regularly recurring period or periods of less than twenty-six (26) weeks in a calendar year for all seasonal periods, as determined by the department;~~

(2) has been hired for a specific temporary seasonal period as determined by the department; ~~and~~

(3) has been notified in writing: ~~at the time hired; or immediately following the seasonal determination by the department, whichever is later;~~

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- (A) that the individual is performing services in seasonal employment for a seasonal employer; and
- (B) that the individual's employment is limited to the beginning and ending dates of the employer's seasonal period as determined by the department; **and**
- (4) received the written notice required by subdivision (3) before the latest of the following dates:**
 - (A) The date the seasonal worker was hired.**
 - (B) The tenth day following the date of a seasonal determination by the department.**
 - (C) The date that is six (6) months before the end of a seasonal period.**

SECTION 17. IC 22-4-10-3, AS AMENDED BY P.L.108-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. Except as provided in section 1(b) through 1(e) of this chapter, each employer shall pay contributions equal to five and six-tenths percent (5.6%) of wages, except as otherwise provided in IC 22-4-11-2, IC 22-4-11-3, **IC 22-4-11-3.5**, IC 22-4-11.5, and IC 22-4-37-3.

SECTION 18. IC 22-4-10-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.5. (a) This section applies to an employer:**

- (1) that is subject to this article for wages paid during calendar year 2009; and**
- (2) whose contribution rate for calendar year 2009 was determined under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3.**
- (b) In addition to the contributions determined under this chapter or IC 22-4-11.5, each employer shall pay an unemployment insurance surcharge that is equal to:**
 - (1) ten percent (10%) of the employer's applicable rate for calendar year 2009 as determined under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3; multiplied by**
 - (2) the employer's taxable wages for calendar year 2009.**
- (c) The unemployment insurance surcharge computed under subsection (b) is payable to the department in two (2) equal installments as follows:**
 - (1) The first installment is payable not later than the last business day of the second calendar quarter of 2009.**
 - (2) The second installment is payable not later than the last business day of the third calendar quarter of 2009.**

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(d) The department shall deposit the amounts received under this section in the unemployment insurance benefit fund established under IC 22-4-26.

(e) The amounts paid under this section do not affect and may not be charged to the experience account of any employer.

(f) This section expires on January 1, 2010.

SECTION 19. IC 22-4-10-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) This section applies to an employer:

- (1) that is subject to this article for wages paid after 2009;
- (2) whose contribution rate for a calendar year was determined under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3;
- (3) whose contributions paid for that calendar year are less than benefits charged to the employer's experience account for that calendar year; and
- (4) for whom the department makes a determination under subsection (b) for that calendar year.

(b) If the department determines, for a calendar year described in subsection (a)(3), that:

- (1) for all or a part of an employer's operations, the employer:
 - (A) was a seasonal employer (as defined in IC 22-4-7-3(a)); and
 - (B) did not apply for a seasonal determination under IC 22-4-14-11; or
- (2) in any of the three (3) calendar years immediately preceding the calendar year described in subsection (a)(3), the annual payroll reported by the employer to the department declined by less than ten percent (10%), as compared with the annual payroll reported by the employer for the prior calendar year;

then, in addition to the contributions determined under this chapter or IC 22-4-11.5, each employer to which this section applies shall pay for the calendar year a seasonal employment surcharge that is computed under subsection (c).

(c) The seasonal employment surcharge is equal to:

- (1) the result of:
 - (A) the employer's benefits charged to the employer's experience account for the calendar year described in subsection (a); minus
 - (B) the employer's contributions for the calendar year described in subsection (a); multiplied by

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(2) the following percentage:

(A) Eighty percent (80%), after the first department determination under subsection (b).

(B) Ninety percent (90%), after the second department determination under subsection (b).

(C) One hundred percent (100%), after the third and each subsequent department determination under subsection (b).

(d) The seasonal employment surcharge computed under subsection (c) is payable to the department not later than the last business day of March of the following calendar year.

(e) The department shall deposit amounts received under this section in the unemployment insurance benefit fund established under IC 22-4-26.

(f) The amounts paid under this section shall be credited to the experience account of the employer that pays the surcharge.

SECTION 20. IC 22-4-11-2, AS AMENDED BY P.L.108-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as provided in IC 22-4-11.5, the department shall for each year determine the contribution rate applicable to each employer.

(b) The balance shall include contributions with respect to the period ending on the computation date and actually paid on or before July 31 immediately following the computation date and benefits actually paid on or before the computation date and shall also include any voluntary payments made in accordance with IC 22-4-10-5:

(1) for each calendar year, an employer's rate shall be determined in accordance with the rate schedules in section ~~3 or 3.3~~ **or 3.5** of this chapter; and

(2) for each calendar year, an employer's rate shall be two and seven-tenths percent (2.7%), except as otherwise provided in IC 22-4-37-3, unless and until:

(A) the employer has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date; and

(B) there has been some annual payroll in each of the three (3) twelve (12) month periods immediately preceding the computation date.

(c) This subsection applies before January 1, 2010. In addition to the conditions and requirements set forth and provided in subsection (b)(2)(A) and (b)(2)(B), an employer's rate shall not be less than five and six-tenths percent (5.6%) unless all required contribution and wage

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reports have been filed within thirty-one (31) days following the computation date and all contributions, penalties, and interest due and owing by the employer or the employer's predecessors for periods prior to and including the computation date have been paid:

- (1) within thirty-one (31) days following the computation date; or
- (2) within ten (10) days after the department has given the employer a written notice by registered mail to the employer's last known address of:

- (A) the delinquency; or

- (B) failure to file the reports;

whichever is the later date.

The board or the board's designee may waive the imposition of rates under this subsection if the board finds the employer's failure to meet the deadlines was for excusable cause. The department shall give written notice to the employer before this additional condition or requirement shall apply.

(d) This subsection applies after December 31, 2009. In addition to the conditions and requirements set forth and provided in subsection (b)(2)(A) and (b)(2)(B), an employer's rate shall not be less than the applicable rate shown in subsection (e) unless all required contributions and wage reports have been filed within thirty-one (31) days following the computation date and all contributions, penalties, and interest due and owing by the employer or the employer's predecessor for periods before and including the computation date have been paid:

- (1) within thirty-one (31) days following the computation date; or**

- (2) within ten (10) days after the department has given the employer a written notice by registered mail to the employer's last known address of:**

- (A) the delinquency; or**

- (B) failure to file the reports;**

whichever is the later date.

The board or the board's designee may waive the imposition of rates under this subsection and subsection (e) if the board finds the employer's failure to meet the deadlines was for excusable cause. The department shall give written notice to the employer before this additional condition or requirement shall apply.

(e) For an employer described in subsection (d), the employer's applicable rate for a calendar year is equal to the rate shown on the following chart on the line opposite the applicable schedule A through E as determined in section 3 of this chapter for the

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calendar year:

Applicable Schedule	Employer Rate
A	8.2%
B	8.1%
C	8.0%
D	6.0%
E	5.4%

(d) (f) However, if the employer is the state or a political subdivision of the state or any instrumentality of a state or a political subdivision, or any instrumentality which is wholly owned by the state and one (1) or more other states or political subdivisions, the employer may contribute at a rate of one percent (1%) until it has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date.

(e) (g) On the computation date every employer who had taxable wages in the previous calendar year shall have the employer's experience account charged with the amount determined under the following formula:

STEP ONE: Divide:

(A) the employer's taxable wages for the preceding calendar year; by

(B) the total taxable wages for the preceding calendar year.

STEP TWO: Multiply the quotient determined under STEP ONE by the total amount of benefits charged to the fund under section 1 of this chapter.

(f) (h) One (1) percentage point of the rate imposed under subsection (c), **subsections (d) and (e)**, or the amount of the employer's payment that is attributable to the increase in the contribution rate, whichever is less, shall be imposed as a penalty that is due and shall be deposited upon collection into the special employment and training services fund established under IC 22-4-25-1. The remainder of the contributions paid by an employer pursuant to the maximum rate shall be:

- (1) considered a contribution for the purposes of this article; and
- (2) deposited in the unemployment insurance benefit fund established under IC 22-4-26.

SECTION 21. IC 22-4-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The applicable schedule of rates for ~~the calendar year 1983 and thereafter years~~ **before January 1, 2010**, shall be determined by the ratio resulting when the balance in the fund as of the determination date is divided by the total payroll of all subject employers for the immediately preceding

EH 1379—LS 7558/DI 96+



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calendar year. Schedule A, B, C, or D, appearing on the line opposite the fund ratio in the schedule below, shall be applicable in determining and assigning each employer's contribution rate for the calendar year immediately following the determination date. For the purposes of this subsection, "total payroll" means total remuneration reported by all contributing employers as required by this article and does not include the total payroll of any employer who elected to become liable for payments in lieu of contributions (as defined in IC 22-4-2-32). For the purposes of this subsection, "subject employers" means those employers who are subject to contribution.

FUND RATIO SCHEDULE

When the Fund Ratio Is:

As Much As	But Less Than	Applicable Schedule
	1.0%	A
1.0%	1.5%	B
1.5%	2.25%	C
2.25%		D

(b) For calendar years before 2002, if the conditions and requirements of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a credit balance and who are eligible therefor according to each employer's credit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, or D on the line opposite his credit reserve ratio as set forth in the rate schedule below:

RATE SCHEDULE FOR ACCOUNTS WITH CREDIT BALANCES

When the Credit Reserve Ratio Is:

As Much	But Less Than	Rate Schedules (%)				
As	Than	A	B	C	D	E
3.0	1.2	0.2	0.2	0.2	0.2	0.15
2.8	3.0	1.4	0.4	0.2	0.2	0.15
2.6	2.8	1.6	0.6	0.2	0.2	0.15
2.4	2.6	1.8	0.8	0.4	0.2	0.2
2.2	2.4	2.0	1.0	0.6	0.2	0.2
2.0	2.2	2.2	1.2	0.8	0.4	0.4
1.8	2.0	2.4	1.4	1.0	0.6	0.6
1.6	1.8	2.6	1.6	1.2	0.8	0.8
1.4	1.6	2.8	1.8	1.4	1.0	1.0
1.2	1.4	3.0	2.0	1.6	1.2	1.2



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1.0	1.2	3.2	2.2	1.8	1.4	1.4
0.8	1.0	3.4	2.4	2.0	1.6	1.6
0.6	0.8	3.6	2.6	2.2	1.8	1.8
0.4	0.6	3.8	2.8	2.4	2.0	2.0
0.2	0.4	4.0	3.0	2.6	2.2	2.2
0	0.2	4.2	3.2	2.8	2.4	2.4

(c) Each employer whose account as of any computation date occurring on and after June 30, 1984, shows a debit balance shall be assigned the rate of contributions appearing on the line opposite his debit ratio as set forth in the following rate schedule for accounts with debit balances:

**RATE SCHEDULE FOR ACCOUNTS
WITH DEBIT BALANCES**

When the Debit Reserve Ratio Is:

As Much	But Less	Rate Schedules (%)				
As	Than	A	B	C	D	E
	1.5	4.5	4.4	4.3	4.2	3.6
1.5	3.0	4.8	4.7	4.6	4.5	3.8
3.0	4.5	5.1	5.0	4.9	4.8	4.1
4.5	6.0	5.4	5.3	5.2	5.1	4.4
6.0		5.7	5.6	5.5	5.4	5.4

(b) The applicable schedule of rates for calendar years after December 31, 2009, shall be determined by the ratio resulting when the balance in the fund as of the determination date is divided by the total payroll of all subject employers for the immediately preceding calendar year. Schedules A through E appearing on the line opposite the fund ratio in the schedule below shall be applicable in determining and assigning each employer's contribution rate for the calendar year immediately following the determination date. For purposes of this subsection, "total payroll" means total remuneration reported by all contributing employers as required by this article and does not include the total payroll of any employer who elected to become liable for payments in lieu of contributions (as defined in IC 22-4-2-32). For the purposes of this subsection, "subject employers" means those employers who are subject to contribution.

FUND RATIO SCHEDULE

When the Fund Ratio Is:

As Much As	But Less Than	Applicable Schedule
	0.5%	A



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0.5%	1.0%	B
1.0%	1.5%	C
1.5%	2.0%	D
2.0%		E

(d) (c) Any adjustment in the amount charged to any employer's experience account made subsequent to the assignment of rates of contributions for any calendar year shall not operate to alter the amount charged to the experience accounts of any other base-period employers.

SECTION 22. IC 22-4-11-3.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.3. (a) For calendar years after 2001 **and before 2010**, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a credit balance and who are eligible therefore according to each employer's credit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, or E on the line opposite the employer's credit reserve ratio as set forth in the rate schedule below:

RATE SCHEDULE FOR ACCOUNTS
WITH CREDIT BALANCES

When the Credit Reserve Ratio Is:

As Much	But Less	Rate Schedules (%)				
As	Than	A	B	C	D	E
3.00		1.10	0.10	0.10	0.10	0.15
2.80	3.00	1.30	0.30	0.10	0.10	0.15
2.60	2.80	1.50	0.50	0.10	0.10	0.15
2.40	2.60	1.70	0.70	0.30	0.10	0.20
2.20	2.40	1.90	0.90	0.50	0.10	0.20
2.00	2.20	2.10	1.10	0.70	0.30	0.40
1.80	2.00	2.30	1.30	0.90	0.50	0.60
1.60	1.80	2.50	1.50	1.10	0.70	0.80
1.40	1.60	2.70	1.70	1.30	0.90	1.00
1.20	1.40	2.90	1.90	1.50	1.10	1.20
1.00	1.20	3.10	2.10	1.70	1.30	1.40
0.80	1.00	3.30	2.30	1.90	1.50	1.60
0.60	0.80	3.50	2.50	2.10	1.70	1.80
0.40	0.60	3.70	2.70	2.30	1.90	2.00
0.20	0.40	3.90	2.90	2.50	2.10	2.20
0.00	0.20	4.10	3.10	2.70	2.30	2.40

(b) For calendar years after 2001 **and before 2010**, if the

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conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a debit balance and who are eligible therefore according to each employer's debit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, or E on the line opposite the employer's debit reserve ratio as set forth in the rate schedule below:

**RATE SCHEDULE FOR ACCOUNTS
WITH DEBIT BALANCES**

When the Debit Reserve Ratio Is:

As Much	But Less	Rate Schedules (%)				
As	Than	A	B	C	D	E
	1.50	4.40	4.30	4.20	4.10	5.40
1.50	3.00	4.70	4.60	4.50	4.40	5.40
3.00	4.50	5.00	4.90	4.70	4.70	5.40
4.50	6.00	5.30	5.20	5.10	5.00	5.40
6.00		5.60	5.50	5.40	5.40	5.40

SECTION 23. IC 22-4-11-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. (a) For calendar years after 2009, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a credit balance and who are eligible for the rate according to each employer's credit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A through E on the line opposite the employer's credit reserve ratio as set forth in the rate schedule below:**

**RATE SCHEDULE FOR ACCOUNTS
WITH CREDIT BALANCES**

When the Credit Reserve Ratio Is:

As Much	But Less	Rate Schedules (%)				
As	Than	A	B	C	D	E
3.00		0.75	0.65	0.60	0.50	0.20
2.80	3.00	1.05	1.10	0.85	0.65	0.35
2.60	2.80	1.35	1.40	1.10	0.80	0.50
2.40	2.60	1.65	1.70	1.35	0.95	0.65
2.20	2.40	1.95	2.00	1.60	1.10	0.80
2.00	2.20	2.25	2.30	1.85	1.25	0.95
1.80	2.00	2.55	2.60	2.10	1.40	1.10



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1.60	1.80	2.85	2.90	2.35	1.55	1.25
1.40	1.60	3.15	3.20	2.60	1.70	1.40
1.20	1.40	3.45	3.50	2.85	1.85	1.55
1.00	1.20	3.75	3.80	3.10	2.00	1.70
0.80	1.00	4.05	4.10	3.35	2.15	1.85
0.60	0.80	4.35	4.40	3.60	2.30	2.00
0.40	0.60	4.65	4.70	3.85	2.45	2.15
0.20	0.40	4.95	5.00	4.10	2.60	2.30
0.00	0.20	5.25	5.30	4.35	2.75	2.45

(b) For calendar years after 2009, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a debit balance and who are eligible for the rate according to each employer's debit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A through E on the line opposite the employer's debit reserve ratio as set forth in the rate schedule below:

**RATE SCHEDULE FOR ACCOUNTS
WITH DEBIT BALANCES**

When the Debit Reserve Ratio Is:

As Much As	But Less Than	Rate Schedules (%)				
		A	B	C	D	E
	1.50	6.00	5.50	5.00	3.00	2.50
1.50	3.00	6.40	6.00	5.50	3.60	3.00
3.00	4.50	6.80	6.50	6.00	4.20	3.50
4.50	6.00	7.20	7.00	6.50	4.80	4.00
6.00	8.00	7.60	7.50	7.00	5.40	4.50
8.00		8.20	8.10	8.00	6.00	5.40

SECTION 24. IC 22-4-11.5-8, AS AMENDED BY P.L.108-2006, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) If the department determines that an employing unit or other person that is not an employer under IC 22-4-7 at the time of the acquisition has acquired an employer's trade or business solely or primarily for the purpose of obtaining a lower employer contribution rate, the employing unit or other person:

- (1) may not assume the experience account balance of the predecessor employer for the resources and liabilities of the predecessor employer's experience account that are attributable to the acquisition; and
- (2) shall pay the applicable contribution rate as determined under



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this article.

(b) In determining whether an employing unit or other person acquired a trade or business solely or primarily for the purpose of obtaining a lower employer contribution rate under subsection (a), the department shall consider the following factors:

- (1) The cost of acquiring the trade or business.
- (2) Whether the employing unit or other person continued the business enterprise of the acquired trade or business, **including whether the predecessor employer is no longer performing the same trade or business and the trade or business is performed by the employing unit to whom the workforce is transferred.** An employing unit is considered to continue the business enterprise if any one (1) of the following applies:

(A) The predecessor employer and the employing unit are corporations that are members of a "controlled group of corporations", as defined in Section 1563 of the Internal Revenue Code (generally parent-subsidiary or brother-sister controlled groups), or would be members if Section 1563(a)(4) and 1563(b) of the Internal Revenue Code did not apply and if the phrase "more than fifty percent (50%)" were substituted for the phrase "at least eighty percent (80%)" wherever it appears in Section 1563(a) of the Internal Revenue Code.

(B) The predecessor employer and the employing unit are entities that are part of an affiliated group, as defined in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%).

(C) A predecessor employer and an employing unit are entities that do not issue stock, either fifty percent (50%) or more of the members of one (1) entity's board of directors (or other governing body) are members of the other entity's board of directors (or other governing body), or the holders of fifty percent (50%) or more of the voting power to select these members are concurrently the holders of fifty percent (50%) or more of that power with respect to the other entity.

(D) Fifty percent (50%) or more of one (1) entity's officers are concurrently officers of the other entity.

(E) Thirty percent (30%) or more of one (1) entity's employees are concurrently employees of the other entity.

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(3) The length of time the employing unit or other person continued the business enterprise of the acquired trade or business.

(4) Whether a substantial number of new employees were hired to perform duties unrelated to the business enterprise that the trade or business conducted before the trade or business was acquired.

(5) Whether the predecessor employer and the employing unit are united by factors of control, operation, or use.

(6) Whether a new employing unit is being created solely to obtain a lower contribution rate.

(c) Any written determination made by the department is conclusive and binding on the employing unit or other person, unless the employing unit or other person files a written protest with the department setting forth all reasons for the protest. A protest under this section must be filed not later than fifteen (15) days after the date the department sends the initial determination to the employing unit or other person. The protest shall be heard and determined under this section and IC 22-4-32-1 through IC 22-4-32-15. The department and the employing unit or other person shall be parties to the hearing before the liability administrative law judge and are entitled to receive copies of all pleadings and the decision.

SECTION 25. IC 22-4-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. ~~(a) With respect to initial claims filed for any week beginning on and after July 6, 1980; and before July 7, 1985; each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week, if properly claimed; benefits at the rate of four and three-tenths percent (4.3%) of the individual's wage credits in the calendar quarter during the individual's base period in which the wage credits were highest. However, the weekly benefit amount may not exceed:~~

- ~~(1) eighty-four dollars (\$84) if the eligible and qualified individual has no dependents;~~
- ~~(2) ninety-nine dollars (\$99) if the eligible and qualified individual has one (1) dependent;~~
- ~~(3) one hundred thirteen dollars (\$113) if the eligible and qualified individual has two (2) dependents;~~
- ~~(4) one hundred twenty-eight dollars (\$128) if the eligible and qualified individual has three (3) dependents; or~~
- ~~(5) one hundred forty-one dollars (\$141) if the eligible and qualified individual has four (4) or more dependents.~~



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With respect to initial claims filed for any week beginning on and after July 7, 1985, and before July 6, 1986, each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week, if properly claimed, benefits at the rate of four and three-tenths percent (4.3%) of the individual's wage credits in the calendar quarter during the individual's base period in which the wage credits were highest. However, the weekly benefit amount may not exceed:

- (1) ninety dollars (\$90) if the eligible and qualified individual has no dependents;
- (2) one hundred six dollars (\$106) if the eligible and qualified individual has one (1) dependent;
- (3) one hundred twenty-one dollars (\$121) if the eligible and qualified individual has two (2) dependents;
- (4) one hundred thirty-seven dollars (\$137) if the eligible and qualified individual has three (3) dependents; or
- (5) one hundred fifty-one dollars (\$151) if the eligible and qualified individual has four (4) or more dependents.

With respect to initial claims filed for any week beginning on and after July 6, 1986, and before July 7, 1991, each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week, if properly claimed, benefits at the rate of four and three-tenths percent (4.3%) of the individual's wage credits in the calendar quarter during the individual's base period in which the wage credits were highest. However, the weekly benefit amount may not exceed:

- (1) ninety-six dollars (\$96) if the eligible and qualified individual has no dependents;
- (2) one hundred thirteen dollars (\$113) if the eligible and qualified individual has one (1) dependent;
- (3) one hundred twenty-nine dollars (\$129) if the eligible and qualified individual has two (2) dependents;
- (4) one hundred forty-seven dollars (\$147) if the eligible and qualified individual has three (3) dependents; or
- (5) one hundred sixty-one dollars (\$161) if the eligible and qualified individual has four (4) or more dependents.

With respect to initial claims filed for any week beginning on and after July 7, 1991, benefits shall be paid in accordance with subsections (d) through (k):

For the purpose of this subsection and subsections (e) through (g), the term "dependent" means lawful husband or wife, natural child, adopted child, stepchild, if such stepchild is not receiving aid to

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dependent children under the welfare program; or child placed in the claimant's home for adoption by an authorized placement agency or a court of law; provided such child is under eighteen (18) years of age and that such dependent claimed has received more than one-half (1/2) the cost of support from the claimant during ninety (90) days (or for duration of relationship; if less) immediately preceding the claimant's benefit year beginning date; but only if such dependent who is the lawful husband or wife is unemployed and currently ineligible for Indiana benefits because of insufficient base period wages. The number and status of dependents shall be determined as of the beginning of the claimant's benefit period and shall not be changed during that benefit period.

With respect to initial claims filed for any week beginning on and after July 6, 1980; the term "dependent" shall include a person with a disability over eighteen (18) years of age who is a child of the claimant and who receives more than one-half (1/2) the cost of his support from the claimant during the ninety (90) day period immediately preceding the claimant's benefit year beginning date. "Child" includes a natural child; an adopted child; a stepchild of claimant; if the stepchild is not receiving aid to dependent children under the welfare program; or a child placed in the claimant's home for adoption by an authorized placement agency or a court of law. The term "disabled" means an individual who by reason of physical or mental defect or infirmity, whether congenital or acquired by accident, injury, or disease, is totally or partially prevented from achieving the fullest attainable physical, social, economic, mental, and vocational participation in the normal process of living.

For the purpose of this subsection, the term "dependent" includes a child for whom claimant is the court appointed legal guardian.

On and after July 6, 1980; and before July 7, 1991, if the weekly benefit amount is less than forty dollars (\$40); the board, through the commissioner, shall pay benefits at the rate of forty dollars (\$40) per week. On and after July 7, 1991, if the weekly benefit amount is less than fifty dollars (\$50); the board, through the commissioner, shall pay benefits at the rate of fifty dollars (\$50) per week. If such weekly benefit amount is not a multiple of one dollar (\$1); it shall be computed to the next lower multiple of one dollar (\$1).

(b) (a) Each eligible individual who is partially or part-totally unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his the individual's weekly benefit amount, less his the individual's deductible income, if any, for such week. If such partial benefit is not a multiple of one dollar (\$1), it shall

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be computed to the next lower multiple of one dollar (\$1). Except for an individual who is totally unemployed, an individual who is not partially or part-totally unemployed is not eligible for any benefit. The board may prescribe rules governing the payment of such partial benefits, and may provide, with respect to individuals whose earnings cannot reasonably be computed on a weekly basis, that such benefits may be computed and paid on other than a weekly basis. However, such rules shall secure results reasonably equivalent to those provided in the analogous provisions of this section.

~~(c)~~ (b) The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be an amount equal to the weekly benefit amount payable to the individual during the individual's applicable benefit period, prior to any reduction of such weekly benefit amount.

(d) With respect to initial claims filed for any week beginning on and after July 7, 1991, and before July 1, 1995, each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week, if properly claimed, benefits at the rate of:

- (1) five percent (5%) of the first one thousand dollars (\$1,000) of the individual's wage credits in the calendar quarter during the individual's base period in which the wage credits were highest; and
- (2) four percent (4%) of the individual's remaining wage credits in the calendar quarter during the individual's base period in which the wage credits were highest.

However, the weekly benefit amount may not exceed the amount specified in subsections (e) through (i):

(e) With respect to initial claims filed for any week beginning on and after July 7, 1991, and before July 5, 1992, the weekly benefit amount may not exceed:

- (1) one hundred sixteen dollars (\$116) if the eligible and qualified individual has no dependents;
- (2) one hundred thirty-four dollars (\$134) if the eligible and qualified individual has one (1) dependent;
- (3) one hundred fifty-three dollars (\$153) if the eligible and qualified individual has two (2) dependents; or
- (4) one hundred seventy-one dollars (\$171) if the eligible and qualified individual has three (3) or more dependents.

(f) With respect to initial claims filed for any week beginning on and after July 5, 1992, and before July 4, 1993, the weekly benefit amount may not exceed:

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(1) one hundred forty dollars (\$140) if the eligible and qualified individual has no dependents;

(2) one hundred sixty dollars (\$160) if the eligible and qualified individual has one (1) dependent; or

(3) one hundred eighty-one dollars (\$181) if the eligible and qualified individual has two (2) or more dependents.

(g) With respect to initial claims filed for any week beginning on and after July 4, 1993, and before July 3, 1994, the weekly benefit amount may not exceed:

(1) one hundred seventy dollars (\$170) if the eligible and qualified individual has no dependents; or

(2) one hundred ninety-two dollars (\$192) if the eligible and qualified individual has one (1) or more dependents.

(h) With respect to initial claims filed for any week beginning on or after July 3, 1994, and before July 1, 1995, the weekly benefit amount may not exceed two hundred two dollars (\$202).

(i) With respect to initial claims filed for any week on or after July 1, 1995, the weekly benefit amount will equal the amount that results from applying the percentages provided in subsections (j) through (k) to the applicable maximum wage credits under IC 22-4-4-3.

(j) With respect to initial claims filed for any week beginning on and after July 1, 1995, and before July 1, 1997, each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week, if properly claimed, benefits at the rate of:

(1) five percent (5%) of the first one thousand seven hundred fifty dollars (\$1,750) of the individual's wage credits in the calendar quarter during the individual's base period in which the wage credits were highest; and

(2) four percent (4%) of the individual's remaining wage credits in the calendar quarter during the individual's base period in which the wage credits were highest.

However, the weekly benefit amount may not exceed the amount specified in subsection (i).

(k) (c) With respect to initial claims filed for any week beginning on and after July 1, 1997, **and before January 1, 2010**, each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week, if properly claimed, benefits at the rate of:

(1) five percent (5%) of the first two thousand dollars (\$2,000) of the individual's wage credits in the calendar quarter during the individual's base period in which the wage credits were highest;

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(2) four percent (4%) of the individual's remaining wage credits in the calendar quarter during the individual's base period in which the wage credits were highest.

(d) With respect to initial claims filed for any week beginning on and after January 1, 2010, each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week, if properly claimed, an amount determined as follows:

(1) During each of the first four (4) weeks in the individual's benefit period in which the individual is entitled to benefits, the individual is entitled to weekly benefits equal to fifty percent (50%) of the individual's prior average weekly wage, rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) During the fifth week and the sixth week in the individual's benefit period in which the individual is entitled to benefits, the individual is entitled to weekly benefits equal to the result of:

(A) the weekly benefit amount received by the individual under subdivision (1); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) During the seventh week and the eighth week in the individual's benefit period in which the individual is entitled to benefits, the individual is entitled to weekly benefits equal to the result of:

(A) the weekly benefit amount received by the individual under subdivision (2); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(4) During the ninth week and any subsequent week in the individual's benefit period in which the individual is entitled to benefits, the individual is entitled to weekly benefits equal to the result of:

(A) the weekly benefit amount received by the individual under subdivision (3); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

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(5) Notwithstanding subdivisions (1) through (4), if, for any week in an individual's benefit period, the individual:

- (A) is totally unemployed (as defined in IC 22-4-3-1); and
- (B) is participating in approved training (as defined by the department);

the individual's weekly benefits, if properly claimed, for that week shall not be reduced from the weekly benefit amount the individual was entitled to receive in the week immediately preceding the week in which the individual first satisfied the requirements of clauses (A) and (B) or in any week thereafter in which the individual continues to satisfy the requirements of clauses (A) and (B).

(6) Notwithstanding subdivisions (1) through (5), the weekly benefit amount may not be less than fifty dollars (\$50).

(7) If an individual:

- (A) is re-employed before the individual exhausts the weekly benefits that the individual is entitled to receive, if properly claimed, during the individual's benefit period; and
- (B) becomes unemployed for a second time during the same benefit period;

the individual's weekly benefit shall be determined for the next applicable week in the individual's benefit period, if properly claimed, by taking into account the weekly benefits already paid in the individual's benefit period.

(e) For purposes of this section, "prior average weekly wage" means the result of:

- (1) the individual's total wage credits during the individual's base period; divided by
- (2) fifty-two (52).

SECTION 26. IC 22-4-12-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Benefits shall be computed upon the basis of wage credits of an individual in ~~his~~ **the individual's** base period. Wage credits shall be reported by the employer and credited to the individual in the manner prescribed by the board. ~~With respect to initial claims filed for any week beginning on and after July 4, 1959; and before July 7, 1991; the maximum total amount of benefits payable to any eligible individual during any benefit period shall not exceed twenty-six (26) times his weekly benefit, or twenty-five percent (25%) of his wage credits with respect to his base period; whichever is the lesser. With respect to initial claims filed for any week beginning on and after July 7, 1991, the maximum total~~

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amount of benefits payable to any eligible individual during any benefit period shall not exceed twenty-six (26) times the individual's weekly benefit, or twenty-eight percent (28%) of the individual's wage credits with respect to the individual's base period, whichever is less. If such maximum total amount of benefits is not a multiple of one dollar (\$1), it shall be computed to the next lower multiple of one dollar (\$1).

(b) The total extended benefit amount payable to any eligible individual with respect to ~~his~~ **the individual's** applicable benefit period shall be fifty percent (50%) of the total amount of regular benefits (including dependents' allowances) which were payable to ~~him~~ **the individual** under this article in the applicable benefit year, or thirteen (13) times the weekly benefit amount (including dependents' allowances) which was payable to ~~him~~ **the individual** under this article for a week of total unemployment in the applicable benefit year, whichever is the lesser amount.

(c) This subsection applies to individuals who file a disaster unemployment claim or a state unemployment insurance claim after June 1, 1990, and before June 2, 1991, or during another time specified in another state statute. An individual is entitled to thirteen (13) weeks of additional benefits, as originally determined, if:

- (1) the individual has established:
 - (A) a disaster unemployment claim under the Stafford Disaster Relief and Emergency Assistance Act; or
 - (B) a state unemployment insurance claim as a direct result of a major disaster;
- (2) all regular benefits and all disaster unemployment assistance benefits:
 - (A) have been exhausted by the individual; or
 - (B) are no longer payable to the individual due to the expiration of the disaster assistance period; and
- (3) the individual remains unemployed as a direct result of the disaster.

SECTION 27. IC 22-4-13-1.1, AS ADDED BY P.L.108-2006, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.1. (a) Notwithstanding any other provisions of this article, if an individual knowingly:

- (1) fails to disclose amounts earned during any week in the individual's waiting period, benefit period, or extended benefit period; or
 - (2) fails to disclose or has falsified any fact;
- that would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits or extended

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benefits, the individual forfeits any department shall cancel all of the individual's wage credits earned or any benefits or extended benefits that might otherwise be payable to the individual for established before the period in which the failure to disclose or falsification occurs and any benefits or extended benefits that might otherwise have become payable to the individual, and any benefit rights or extended benefit rights based on those wage credits shall be forfeited.

(b) In addition to amounts forfeited under subsection (a), an individual is subject to the following civil penalties for each instance in which the individual knowingly fails to disclose or falsifies any fact that if accurately reported to the department would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits or extended benefits:

- (1) For the first instance, an amount equal to twenty-five percent (25%) of the benefit overpayment.
- (2) For the second instance, an amount equal to fifty percent (50%) of the benefit overpayment.
- (3) For the third and each subsequent instance, an amount equal to one hundred percent (100%) of the benefit overpayment.

(c) The department's determination under this section constitutes an initial determination under IC 22-4-17-2(e) and is subject to a hearing and review under IC 22-4-17-3 through IC 22-4-17-15.

(d) Interest and civil penalties collected under this chapter shall be deposited in the special employment and training services fund established under IC 22-4-25-1.

(e) An individual, group, association, or other entity that knowingly advises or assists an individual in a failure to disclose or falsification described in subsection (a) is jointly and severally liable to the department for all overpayments and penalties set forth in this section. Each claim on which the individual, group, association, or other entity has provided advice or has assisted is considered a separate instance for purposes of determining the penalty under subsection (b).

SECTION 28. IC 22-4-14-1, AS AMENDED BY P.L.138-2008, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in IC 22-4-5-1 or subsection (b), ~~or (c);~~ an unemployed individual shall be eligible to receive benefits with respect to any week only if the individual has made a claim for benefits in accordance with IC 22-4-17.

(b) A person who:

- (1) accepts a layoff under an inverse seniority clause of a validly

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negotiated contract; and

(2) otherwise meets the eligibility requirements established by this article;

is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person.

~~(c) This subsection does not apply to a person who elects to retire in connection with a layoff or plant closure and receive pension, retirement, or annuity payments. Except as provided in IC 22-4-5-1, a person who:~~

~~(1) accepts an offer of payment or other compensation offered by an employer to avert or lessen the effect of a layoff or plant closure; and~~

~~(2) otherwise meets the eligibility requirements established by this article;~~

~~is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person.~~

SECTION 29. IC 22-4-14-2, AS AMENDED BY P.L.108-2006, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) An unemployed individual is eligible to receive benefits with respect to any week only if the individual has:

(1) registered for work at an employment office or branch thereof or other agency designated by the commissioner within the time limits that the department by rule adopts; and

(2) subsequently reported with the frequency and in the manner, either in person or in writing, that the department by rule adopts.

(b) Failure to comply with subsection (a) shall be excused by the commissioner or the commissioner's authorized representative upon a showing of good cause therefor. ~~The department shall by rule waive or alter the requirements of this section as to such types of cases or situations with respect to which the department finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this article.~~

(c) The department shall provide job counseling or training to an individual who remains unemployed for at least four (4) weeks. The manner and duration of the counseling shall be determined by the department.

(d) An individual who is receiving benefits as determined under IC 22-4-15-1(c)(8) is entitled to complete the reporting, counseling, or training that must be conducted in person at a one stop center selected by the individual. The department shall advise an eligible individual

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that this option is available.

(e) If:

(1) an otherwise eligible individual fails without good cause, as determined by the commissioner under rules prescribed by the commissioner, to attend a job search workshop or a training or retraining course when directed by the department; and

(2) the workshop or course is available at public expense; the individual is not eligible for benefits with respect to any week in which the failure occurred.

SECTION 30. IC 22-4-14-3, AS AMENDED BY P.L.108-2006, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) An individual who is receiving benefits as determined under IC 22-4-15-1(c)(8) may restrict the individual's availability because of the individual's need to address the physical, psychological, or legal effects of being a victim of domestic or family violence (as defined in IC 31-9-2-42).

(b) An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

- (1) is physically and mentally able to work;
- (2) is available for work;
- (3) is found by the department to be making an effort to secure full-time work; and
- (4) participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services under a profiling system established by the department, unless the department determines that:

(A) the individual has completed the reemployment services; or

(B) failure by the individual to participate in or complete the reemployment services is excused by the director under IC 22-4-14-2(b).

The term "effort to secure full-time work" shall be defined by the ~~board~~ **department** through rule which shall take into consideration whether such individual has a reasonable assurance of reemployment and, if so, the length of the prospective period of unemployment, **but must include as a condition the individual's submission of at least three (3) separate applications for work in each week for which the individual is claiming benefits.** However, if an otherwise eligible individual is unable to work or unavailable for work on any normal work day of the week the individual shall be eligible to receive benefits

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with respect to such week reduced by one-third (1/3) of the individual's weekly benefit amount for each day of such inability to work or unavailability for work.

(c) For the purpose of this article, unavailability for work of an individual exists in, but is not limited to, any case in which, with respect to any week, it is found:

- (1) that such individual is engaged by any unit, agency, or instrumentality of the United States, in charge of public works or assistance through public employment, or any unit, agency, or instrumentality of this state, or any political subdivision thereof, in charge of any public works or assistance through public employment;
- (2) that such individual is in full-time active military service of the United States, or is enrolled in civilian service as a conscientious objector to military service;
- (3) that such individual is suspended for misconduct in connection with the individual's work; or
- (4) that such individual is in attendance at a regularly established public or private school during the customary hours of the individual's occupation or is in any vacation period intervening between regular school terms during which the individual is a student. However, this subdivision does not apply to any individual who is attending a regularly established school, has been regularly employed and upon becoming unemployed makes an effort to secure full-time work and is available for suitable full-time work with the individual's last employer, or is available for any other full-time employment deemed suitable.

(d) Notwithstanding any other provisions in this section or IC 22-4-15-2, no otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the department, nor shall such individual be denied benefits with respect to any week in which the individual is in training with the approval of the department by reason of the application of the provisions of this section with respect to the availability for work or active search for work or by reason of the application of the provisions of IC 22-4-15-2 relating to failure to apply for, or the refusal to accept, suitable work. The department shall by rule prescribe the conditions under which approval of such training will be granted.

SECTION 31. IC 22-4-14-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. ~~As a condition precedent to the payment of benefits to an individual with respect to any week such individual~~ **A claimant shall be required to serve a**

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waiting period of one (1) week in which ~~he~~ **the claimant** has been totally, partially, or part-totally unemployed ~~and with respect to which he has received no before receiving~~ benefits. ~~but during which he was~~ **A claimant must be** eligible for benefits in all other respects and was not otherwise ineligible for benefits under any provisions of this article **during the waiting period.** Such waiting period shall be a week in the individual's benefit period and during such week such individual shall be physically and mentally able to work and available for work. **A claimant shall serve a waiting period upon filing any initial or additional claim if the claimant has received from any source (other than unemployment insurance benefits) remuneration that exceeds the claimant's maximum weekly benefit in each week for six (6) or more weeks preceding the claim or initial claim, regardless of whether the claimant has previously served a waiting period.** No individual in a benefit period may file for waiting period or benefit period rights with respect to any subsequent period. ~~Provided;~~ However, ~~That~~ no waiting period shall be required as a prerequisite for drawing extended benefits.

SECTION 32. IC 22-4-14-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) ~~As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after July 6, 1980; and before July 7, 1985:~~

(1) ~~the individual must have established; after the last day of his last base period; if any; wage credits (as defined in IC 22-4-4-3) and within the meaning of IC 22-4-22-3 equal to at least one and one-quarter (1.25) times the wages paid to him in the calendar quarter in which his wages were highest; and~~

(2) ~~the individual must have established wage credits in the last two (2) calendar quarters of his base period in a total amount of not less than nine hundred dollars (\$900) and an aggregate amount in the four (4) calendar quarters of his base period of not less than one thousand five hundred dollars (\$1,500);~~

(b) ~~As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after July 7, 1985; and before January 1, 1992:~~

(1) ~~the individual must have established; after the last day of the individual's last base period; if any; wage credits (as defined in IC 22-4-4-3 and within the meaning of IC 22-4-22-3) equal to at least one and one-half (1.5) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and~~

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(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than one thousand five hundred dollars (\$1,500) and an aggregate amount in the four (4) calendar quarters of the individual's base period of not less than two thousand five hundred dollars (\$2,500):

(c) As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after January 1, 1992, and before July 1, 1995:

(1) the individual must have established, after the last day of the individual's last base period, if any, wage credits (as defined in IC 22-4-4-3 and within the meaning of IC 22-4-22-3) equal to at least one and one-quarter (1.25) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and

(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than one thousand five hundred dollars (\$1,500) and an aggregate in the four (4) calendar quarters of the individual's base period of not less than two thousand five hundred dollars (\$2,500):

~~(d)~~ (a) As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after July 1, 1995, **but before January 1, 2010:**

(1) the individual must have established, after the last day of the individual's last base period, if any, wage credits (as defined in IC 22-4-4-3 and within the meaning of IC 22-4-22-3) equal to at least one and one-quarter (1.25) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and

(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than one thousand six hundred fifty dollars (\$1,650) and an aggregate in the four (4) calendar quarters of the individual's base period of not less than two thousand seven hundred fifty dollars (\$2,750).

~~(e)~~ (b) As a further condition precedent to the payment of benefits to an individual with respect to a benefit year established on and after July 1, 1995, an insured worker may not receive benefits in a benefit year unless after the beginning of the immediately preceding benefit year during which the individual received benefits, the individual performed insured work and earned wages in employment under

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IC 22-4-8 in an amount not less than the individual's weekly benefit amount established for the individual in the preceding benefit year in each of eight (8) weeks.

(c) As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after January 1, 2010:

(1) the individual must have established, after the last day of the individual's last base period, if any, wage credits (as defined in IC 22-4-4-3 and within the meaning of wages under IC 22-4-22-3) equal to at least one and five-tenths (1.5) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and

(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than two thousand five hundred dollars (\$2,500) and a total amount in the four (4) calendar quarters of the individual's base period of not less than four thousand two hundred dollars (\$4,200).

(d) As a further condition precedent to the payment of benefits to an individual with respect to a benefit year established on and after January 1, 2010, an individual may not receive benefits in a benefit year unless the individual has earned wage credits exceeding one thousand dollars (\$1,000) in three (3) separate calendar quarters of the individual's base period.

SECTION 33. IC 22-4-14-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) For weeks of unemployment occurring after October 1, 1983, benefits may be paid to an individual on the basis of service performed in seasonal employment (as defined in IC 22-4-8-4) only if the claim is filed within the operating period of the seasonal employment. If the claim is filed outside the operating period of the seasonal employment, benefits may be paid on the basis of nonseasonal wages only.

(b) An employer shall file an application for a seasonal determination (as defined by IC 22-4-7-3) with the department of workforce development. A seasonal determination shall be made by the department within ninety (90) days after the filing of such an application. Until a seasonal determination by the department has been made in accordance with this section, no employer or worker may be considered seasonal.

(c) Any interested party may file an appeal regarding a seasonal determination within fifteen (15) calendar days after the determination by the department and obtain review of the determination in

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accordance with IC 22-4-32.

(d) Whenever an employer is determined to be a seasonal employer, the following provisions apply:

(1) The seasonal determination becomes effective the first day of the calendar quarter commencing after the date of the seasonal determination.

(2) The seasonal determination does not affect any benefit rights of seasonal workers with respect to employment before the effective date of the seasonal determination.

~~(e) If a seasonal employer, after the date of its seasonal determination, operates its business or its seasonal operation during a period or periods of twenty-six (26) weeks or more in a calendar year, the employer shall be determined by the department to have lost its seasonal status with respect to that business or operation effective at the end of the then current calendar quarter. The redetermination shall be reported in writing to the employer. Any interested party may file an appeal within fifteen (15) calendar days after the redetermination by the department and obtain review of the redetermination in accordance with IC 22-4-32.~~

~~(f)~~ (e) Seasonal employers shall keep account of wages paid to seasonal workers within the seasonal period as determined by the department and shall report these wages on a special seasonal quarterly report form provided by the department.

~~(g)~~ (f) The **board department** shall adopt rules applicable to seasonal employers for determining their normal seasonal period or periods.

SECTION 34. IC 22-4-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) With respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left the individual's **most recent** employment without good cause in connection with the work or who was discharged from the individual's **most recent** employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of the individual's current

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claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction will be raised to the next higher even dollar amount. ~~The maximum benefit amount may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.~~

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits

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for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

- (A) the employment was outside the individual's labor market;
- (B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and
- (C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

(8) An individual shall not be subject to disqualification if the individual voluntarily left employment or was discharged due to circumstances directly caused by domestic or family violence (as defined in IC 31-9-2-42). An individual who may be entitled to benefits based on this modification may apply to the office of the attorney general under IC 5-26.5 to have an address designated by the office of the attorney general to serve as the individual's address for purposes of this article.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

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(d) "Discharge for just cause" as used in this section is defined to include but not be limited to:

- (1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;
- (2) knowing violation of a reasonable and uniformly enforced rule of an employer, **including a rule regarding attendance;**
- (3) **if an employer does not have a rule regarding attendance, an individual's** unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;
- (4) damaging the employer's property through willful negligence;
- (5) refusing to obey instructions;
- (6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;
- (7) conduct endangering safety of self or coworkers; ~~or~~
- (8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction; ~~or for~~
- (9) any breach of duty in connection with work which is reasonably owed an employer by an employee.

(e) To verify that domestic or family violence has occurred, an individual who applies for benefits under subsection (c)(8) shall provide one (1) of the following:

- (1) A report of a law enforcement agency (as defined in IC 10-13-3-10).
- (2) A protection order issued under IC 34-26-5.
- (3) A foreign protection order (as defined in IC 34-6-2-48.5).
- (4) An affidavit from a domestic violence service provider verifying services provided to the individual by the domestic violence service provider.

(f) An employer's failure to provide a reason for termination at the time of discharge shall not prevent a finding of discharge for just cause if the individual is aware or should be aware of the reason for termination.

SECTION 35. IC 22-4-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for waiting period or benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:

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(1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;

(2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the individual by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service, or an employment unit; or

(3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(c) With respect to extended benefit periods established on and after July 5, 1981, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks.

(d) If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction shall be raised to the next higher even dollar amount. ~~The maximum benefit amount of the individual's current claim may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.~~

(e) In determining whether or not any such work is suitable for an individual, the department shall consider:

- (1) the degree of risk involved to such individual's health, safety, and morals;
- (2) the individual's physical fitness and prior training and experience;
- (3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and

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- (4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which makes such offered work unsuitable to the individual because of the distance involved. **During the first four (4) consecutive weeks of claiming benefits, work is not considered unsuitable solely because the work pays not less than eighty percent (80%) of the individual's prior weekly wage. During the fifth through the twelfth consecutive week of claiming benefits, work shall not be considered unsuitable solely because the work pays not less than sixty percent (60%) of the individual's prior weekly wage. After twelve (12) consecutive weeks of claiming benefits, work shall not be considered unsuitable solely because the work pays not less than fifty percent (50%) of the individual's prior weekly wage.** For an individual who is subject to section 1(c)(8) of this chapter, the determination of suitable work for the individual must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic or family violence.

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
- (2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
- (3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.
- (4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary

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occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:

(A) the individual's average weekly benefit amount for the individual's benefit year; plus

(B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.

(2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.

(3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such provisions are not inconsistent with the applicable federal law.

(4) If the position pays wages less than the higher of:

(A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the Fair Labor Standards Act of 1938), without regard to any exemption; or

(B) the state minimum wage (IC 22-2-2).

(i) The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection (g)) to which subsection (h) would not apply.

SECTION 36. IC 22-4-15-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) **Subject to IC 22-4-14-4**, an individual shall be ineligible for waiting period or benefit rights for any week with respect to which the individual receives, is receiving, or has received payments equal to or exceeding ~~his~~ **the individual's** weekly benefit amount in the form of:

(1) deductible income as defined and applied in IC 22-4-5-1 and IC 22-4-5-2; or

(2) any pension, retirement or annuity payments, under any plan of an employer whereby the employer contributes a portion or all of the money. This disqualification shall apply only if some or all of the benefits otherwise payable are chargeable to the experience or reimbursable account of such employer, or would have been

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chargeable except for the application of this chapter. For the purposes of this subdivision, ~~(2)~~; federal old age, survivors and disability insurance benefits are not considered payments under a plan of an employer whereby the employer maintains the plan or contributes a portion or all of the money to the extent required by federal law.

(b) If the payments described in subsection (a) are less than ~~his~~ **the individual's** weekly benefit amount, an otherwise eligible individual shall not be ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments.

(c) This section does not preclude an individual from delaying a claim to pension, retirement, or annuity payments until the individual has received the benefits to which the individual would otherwise be eligible under this chapter. Weekly benefits received before the date the individual elects to retire shall not be reduced by any pension, retirement, or annuity payments received on or after the date the individual elects to retire.

SECTION 37. IC 22-4-15-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.1. (a) Notwithstanding any other provisions of this article, all of the individual's wage credits established prior to the day upon which the individual was discharged for gross misconduct in connection with work are canceled.

(b) As used in this section, "gross misconduct" includes means any of the following, as determined by the department by a preponderance of the evidence:

- (1) A felony. ~~or~~
- (2) A Class A misdemeanor. ~~committed in connection with work but only if the felony or misdemeanor is admitted by the individual or has resulted in a conviction.~~
- (3) **Working, or reporting for work, in a state of intoxication caused by the individual's use of alcohol or a controlled substance (as defined in IC 35-48-1-9).**
- (4) **Battery on another individual while on the employer's property or during working hours.**
- (5) **Theft or embezzlement.**
- (6) **Fraud.**

(c) An employer:

- (1) **has the burden of proving by a preponderance of the evidence that a discharged employee's conduct was gross misconduct; and**
- (2) **may present evidence that the employer filled or**

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maintained the position or job held by the discharged employee after the employee's discharge.

(d) It is not a defense under this section that a discharged employee's conduct did not result in:

- (1) a prosecution for an offense; or**
- (2) a conviction of an offense.**

SECTION 38. IC 22-4-17-2, AS AMENDED BY P.L.108-2006, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) When an individual files an initial claim, the department shall promptly make a determination of the individual's status as an insured worker in a form prescribed by the department. A written notice of the determination of insured status shall be furnished to the individual promptly. Each such determination shall be based on and include a written statement showing the amount of wages paid to the individual for insured work by each employer during the individual's base period and shall include a finding as to whether such wages meet the requirements for the individual to be an insured worker, and, if so, the week ending date of the first week of the individual's benefit period, the individual's weekly benefit amount, and the maximum amount of benefits that may be paid to the individual for weeks of unemployment in the individual's benefit period. For the individual who is not insured, the notice shall include the reason for the determination. Unless the individual, within ten (10) days after such determination was mailed to the individual's last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) The department shall promptly furnish each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to such individual with a notice in writing of the employer's benefit liability. ~~Such~~ **The** notice shall contain the date, the name and Social Security account number of the individual, the ending date of the individual's base period, ~~and~~ the week ending date of the first week of the individual's benefit period, ~~Such~~ **the time by which the employer is required to respond to the notice, and complete information about the rules of evidence and standards of proof that the department will apply to determine the validity of a claim, if an employer disputes the claim.** The notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. **An employer in an individual's base period is entitled to ask for a**

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hearing concerning an individual's eligibility to receive benefits not later than ten (10) days after the date the notice of the benefit liability was mailed to the employer's last known address or otherwise delivered to the employer. Unless the an employer within ten (10) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

(c) An employing unit, including an employer, having knowledge of any facts which may affect an individual's eligibility or right to waiting period credits or benefits, shall notify the department of such facts within ten (10) days after the mailing of notice that a former employee has filed an initial or additional claim for benefits on a form prescribed by the department.

(d) If, after the department determines that additional information is necessary to make a determination under this chapter:

(1) the department makes a request in writing for additional information from an employing unit, including an employer, on a form prescribed by the department; and

(2) the employing unit fails to respond within ten (10) days after the date the request is delivered to the employing unit; the department shall make the determination with the information available.

(e) If:

(1) an employer subsequently obtains a determination by the department that the employee is not eligible for benefits; and
(2) the determination is at least in part based on information that the department requested from the employer under subsection (d), but which the employer failed to provide within ten (10) days after the department's request was delivered to the employer;

the employer's experience account shall be charged an amount equal to fifty percent (50%) of the benefits paid to the employee to which the employee was not entitled.

(f) If:

(1) the employer's experience account is charged under subsection (e); and

(2) the employee repays all or a part of the benefits on which the charge under subsection (e) is based;

the employer shall receive a credit to the employer's experience

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account that is equal to the amount of the employee's repayment up to the amount charged to the employer's experience account under subsection (e).

~~(d)~~ **(g)** In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period, determine the claimant's eligibility with respect to each week for which the claimant claims waiting period credit or benefit rights, the validity of the claimant's claim therefor, and the cause for which the claimant left the claimant's work, or may refer such claim to an administrative law judge who shall make the initial determination with respect thereto in accordance with the procedure in ~~IC 22-4-17-3~~. **section 3 of this chapter. Before a determination is made under this subsection, each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to the claimant must receive notice of the employer's potential benefit liability, the time by which the employer is required to respond to the notice, and complete information about the rules of evidence and standards of proof that the deputy will apply to determine the validity of the claim.**

~~(e)~~ **(h)** In cases where the claimant's benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer or employers directly involved or connected with the issue raised as to the validity of such claim, the eligibility of the claimant for waiting period credit or benefits, or the imposition of a disqualification period or penalty, or the denial thereof, and of the cause for which the claimant left the claimant's work, of such determination and the reasons thereof.

(i) Except as otherwise hereinafter provided in this ~~subsection~~ **section** regarding parties located in Alaska, Hawaii, and Puerto Rico, unless the claimant or such employer, within ten (10) days after ~~such~~ **the notification required by subsection (g)** was mailed to the claimant's or the employer's last known address or otherwise delivered to the claimant or the employer, asks **for** a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. ~~With respect to~~

(j) ~~For a~~ notice of disputed administrative determination or decision mailed or otherwise delivered to the claimant or employer either of whom is located in Alaska, Hawaii, or Puerto Rico, unless ~~such the~~ claimant or employer, within fifteen (15) days after ~~such the~~ notification **required by subsection (g)** was mailed to the claimant's or employer's last known address or otherwise delivered to the claimant

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or employer, asks **for** a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith.

(k) If ~~such~~ **a claimant or an employer requests a hearing is desired, under subsection (i) or (j)**, the request therefor shall be filed with the department in writing within the prescribed periods as above set forth in this ~~subsection~~ **section** and shall be in such form as the department may prescribe. In the event a hearing is requested by an employer or the department after it has been administratively determined that benefits should be allowed to a claimant, entitled benefits shall continue to be paid to said claimant unless said administrative determination has been reversed by a due process hearing. Benefits with respect to any week not in dispute shall be paid promptly regardless of any appeal.

~~(f)~~ **(l)** A person may not participate on behalf of the department in any case in which the person is an interested party.

~~(g)~~ **(m)** Solely on the ground of obvious administrative error appearing on the face of an original determination, and within the benefit year of the affected claims, the commissioner, or a representative authorized by the commissioner to act in the commissioner's behalf, may reconsider and direct the deputy to revise the original determination so as to correct the obvious error appearing therein. Time for filing an appeal and requesting a hearing before an administrative law judge regarding the determinations handed down pursuant to this subsection shall begin on the date following the date of revision of the original determination and shall be filed with the commissioner in writing within the prescribed periods as above set forth in subsection (c).

~~(h)~~ **(n)** Notice to the employer and the claimant that the determination of the department is final if a hearing is not requested shall be prominently displayed on the notice of the determination which is sent to the employer and the claimant.

~~(i)~~ **(o)** If an allegation of the applicability of IC 22-4-15-1(c)(8) is made by the individual at the time of the claim for benefits, the department shall not notify the employer of the claimant's current address or physical location.

SECTION 39. IC 22-4-17-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. **(a)** Unless such request for hearing is withdrawn, an administrative law judge, after **providing the notice required under section 6 of this chapter and** affording the parties a reasonable opportunity for fair hearing, shall affirm, modify, or reverse the findings of fact and decision of the

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deputy.

(b) The parties shall be duly notified of ~~such~~ the decision **made under subsection (a)** and the reasons therefor, which shall be deemed to be the final decision of the review board, unless within fifteen (15) days after the date of notification or mailing of such decision, an appeal is taken by the commissioner or by any party adversely affected by such decision to the review board.

SECTION 40. IC 22-4-17-4, AS AMENDED BY P.L.108-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) The department shall employ one (1) or more administrative law judges to hear and decide disputed claims. Administrative law judges employed under this section are not subject to IC 4-21.5 or any other statute regulating administrative law judges, unless specifically provided.

(b) **The department shall provide at least annually to all administrative law judges, review board members, and other individuals who adjudicate claims training concerning:**

- (1) unemployment compensation law;
- (2) rules for the conduct of hearings and appeals; and
- (3) rules of conduct for administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process.

(c) The department regularly shall monitor the hearings and decisions of its administrative law judges, review board members, and other individuals who adjudicate claims to ensure that the hearings and decisions strictly comply with the law and the rules described in subsection (b).

(d) An individual who does not strictly comply with the law and the rules described in subsection (b), including the rules of conduct for administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process, is subject to disciplinary action by the department, up to and including suspension from or termination of employment.

SECTION 41. IC 22-4-17-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The governor shall appoint a review board composed of three (3) members, not more than two (2) of whom shall be members of the same political party, with salaries to be fixed by the governor. The review board shall consist of the chairman and the two (2) members who shall serve for terms of three (3) years. At least one (1) member must be admitted to the practice of law in Indiana.

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(b) Any claim pending before an administrative law judge, and all proceedings therein, may be transferred to and determined by the review board upon its own motion, at any time before the administrative law judge announces ~~his~~ a decision. Any claim pending before either an administrative law judge or the review board may be transferred to the board for determination at the direction of the board. If the review board considers it advisable to procure additional evidence, it may direct the taking of additional evidence within a time period it shall fix. **An employer that is a party to a claim transferred to the review board or the board under this subsection is entitled to receive notice in accordance with section 6 of this chapter of the transfer or any other action to be taken under this section before a determination is made or other action concerning the claim is taken.**

(c) Any proceeding so removed to the review board shall be heard by a quorum of the review board in accordance with the requirements of section 3 of this chapter. The review board shall notify the parties to any claim of its decision, together with its reasons for the decision.

(d) Members of the review board, when acting as administrative law judges, are subject to section 15 of this chapter.

(e) The review board may on the board's own motion affirm, modify, set aside, remand, or reverse the findings, conclusions, or orders of an administrative law judge on the basis of any of the following:

- (1) Evidence previously submitted to the administrative law judge.
- (2) The record of the proceeding after the taking of additional evidence as directed by the review board.
- (3) A procedural error by the administrative law judge.

SECTION 42. IC 22-4-17-6, AS AMENDED BY P.L.108-2006, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. **(a)** The manner in which disputed claims shall be presented and the conduct of hearings and appeals, **including the conduct of administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process**, shall be in accordance with rules adopted by the department for determining the rights of the parties, whether or not the rules conform to common law or statutory rules of evidence and other technical rules of procedure.

(b) A full and complete record shall be kept of all proceedings in connection with a disputed claim. The testimony at any hearing upon a disputed claim need not be transcribed unless the disputed claim is further appealed.

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(c) Each party to a hearing before an administrative law judge held under section 3 of this chapter shall be mailed a notice of the hearing at least ten (10) days before the date of the hearing specifying the **date**, place, and time of the hearing, ~~and~~ identifying the issues to be decided, **and providing complete information about the rules of evidence and standards of proof that the administrative law judge will use to determine the validity of the claim.**

(d) If a hearing so scheduled has not commenced within at least sixty (60) minutes of the time for which it was scheduled, then a party involved in the hearing may request a continuance of the hearing. Upon submission of a request for continuance of a hearing under circumstances provided in this section, the continuance shall be granted unless the party requesting the continuance was responsible for the delay in the commencement of the hearing as originally scheduled. In the latter instance, the continuance shall be discretionary with the administrative law judge. Testimony or other evidence introduced by a party at a hearing before an administrative law judge or the review board that another party to the hearing:

- (1) is not prepared to meet; and
- (2) by ordinary prudence could not be expected to have anticipated;

shall be good cause for continuance of the hearing and upon motion such continuance shall be granted.

SECTION 43. IC 22-4-18-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. The department of workforce development established under IC 22-4.1-2-1 shall administer job training and placement services ~~the skills 2016 training program established by IC 22-4-10.5-2;~~ and unemployment insurance.

SECTION 44. IC 22-4-19-6, AS AMENDED BY P.L.108-2006, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) Each employing unit shall keep true and accurate records containing information the department considers necessary. These records are:

- (1) open to inspection; and
- (2) subject to being copied;

by an authorized representative of the department at any reasonable time and as often as may be necessary. The department, the review board, or an administrative law judge may require from any employing unit any verified or unverified report, with respect to persons employed by it, which is considered necessary for the effective administration of this article.

(b) Except as provided in subsections (d) and (f), information

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obtained or obtained from any person in the administration of this article and the records of the department relating to the unemployment tax ~~the skills 2016 assessment under IC 22-4-10.5-3~~; or the payment of benefits is confidential and may not be published or be open to public inspection in any manner revealing the individual's or the employing unit's identity, except in obedience to an order of a court or as provided in this section.

(c) A claimant **or an employer** at a hearing before an administrative law judge or the review board shall be supplied with information from the records referred to in this section to the extent necessary for the proper presentation of the subject matter of the appearance. The department may make the information necessary for a proper presentation of a subject matter before an administrative law judge or the review board available to an agency of the United States or an Indiana state agency.

(d) The department may release the following information:

- (1) Summary statistical data may be released to the public.
- (2) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the Indiana economic development corporation only for the following purposes:
 - (A) The purpose of conducting a survey.
 - (B) The purpose of aiding the officers or employees of the Indiana economic development corporation in providing economic development assistance through program development, research, or other methods.
 - (C) Other purposes consistent with the goals of the Indiana economic development corporation and not inconsistent with those of the department.
- (3) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the budget agency only for aiding the employees of the budget agency in forecasting tax revenues.
- (4) Information obtained from any person in the administration of this article and the records of the department relating to the unemployment tax or the payment of benefits for use by the following governmental entities:
 - (A) department of state revenue; or
 - (B) state or local law enforcement agencies;
 only if there is an agreement that the information will be kept

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confidential and used for legitimate governmental purposes.

(e) The department may make information available under subsection (d)(1), (d)(2), or (d)(3) only:

(1) if:

(A) data provided in summary form cannot be used to identify information relating to a specific employer or specific employee; or

(B) there is an agreement that the employer specific information released to the Indiana economic development corporation or the budget agency will be treated as confidential and will be released only in summary form that cannot be used to identify information relating to a specific employer or a specific employee; and

(2) after the cost of making the information available to the person requesting the information is paid under IC 5-14-3.

(f) In addition to the confidentiality provisions of subsection (b), the fact that a claim has been made under IC 22-4-15-1(c)(8) and any information furnished by the claimant or an agent to the department to verify a claim of domestic or family violence are confidential. Information concerning the claimant's current address or physical location shall not be disclosed to the employer or any other person. Disclosure is subject to the following additional restrictions:

(1) The claimant must be notified before any release of information.

(2) Any disclosure is subject to redaction of unnecessary identifying information, including the claimant's address.

(g) An employee:

(1) of the department who recklessly violates subsection (a), (c), (d), (e), or (f); or

(2) of any governmental entity listed in subsection (d)(4) who recklessly violates subsection (d)(4);

commits a Class B misdemeanor.

(h) An employee of the Indiana economic development corporation or the budget agency who violates subsection (d) or (e) commits a Class B misdemeanor.

(i) An employer or agent of an employer that becomes aware that a claim has been made under IC 22-4-15-1(c)(8) shall maintain that information as confidential.

(j) The department may charge a reasonable processing fee not to exceed two dollars (\$2) for each record that provides information about an individual's last known employer released in compliance with a court order under subsection (b).

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SECTION 45. IC 22-4-19-7, AS AMENDED BY P.L.108-2006, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. In any case where an employing unit, or any officer, member, or agent thereof or any other person having possession of the records thereof, shall fail or refuse upon demand by the board, the department, the review board, or an administrative law judge, or the duly authorized representative of any of them, to produce or permit the examination or copying of any book, paper, account, record, or other data pertaining to payrolls or employment or ownership of interests or stock in any employing unit, or bearing upon the correctness of any contribution report, ~~or the skills 2016 training assessment under IC 22-4-10.5-3,~~ or for the purpose of making a report as required by this article where none has been made, then and in that event the board, the department, the review board, or the administrative law judge, or the duly authorized representative of any of them, may by issuance of a subpoena require the attendance of such employing unit, or any officer, member, or agent thereof or any other person having possession of the records thereof, and take testimony with respect to any such matter and may require any such person to produce any books or records specified in such subpoena.

SECTION 46. IC 22-4-19-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) Where an employer makes an offer of employment directly to a claimant, promptly giving written notice to the department of such offer, or when any such employer makes such offer of employment in writing through the department, the commissioner, the deputy, or an authorized representative of the state or the United States employment service, which offer shall specify such claimant by name, and when such claimant thereafter fails to register subsequent to the receipt of such offer of employment by the department, the commissioner, the deputy, or an authorized representative of the state or the United States employment service, then a notice in writing shall promptly be mailed to such employer of such claimant's said failure to return and to register. If such claimant thereafter, in the claimant's benefit period, again registers or renews and continues the claimant's claim for benefits, such employer shall promptly be mailed notice of such fact in order that the employer may have an opportunity to renew and remake an offer of employment to such claimant.

(b) Upon the filing by an individual of an additional claim for benefits, a notice in writing or a carbon copy of such additional claim shall be mailed promptly to the base period employer or employers and to the employing unit, including an employer from whose employ the

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individual claims to have been last separated.

(c) Upon the filing by an individual of an initial claim for benefits, a notice in writing or a carbon copy of such initial claim shall be mailed promptly to **all base period employers and** the employing unit, including an employer from whose employ the individual claims to have been last separated. The computation of the benefit rights of such individual shall be made as promptly as possible and, if such claim is deemed valid, then a notice of benefit liability shall be mailed to each employer whose experience account is potentially chargeable with benefits to be paid to such individual. Such notice shall contain the date, the name and Social Security number of the individual, the ending date of the individual's base period, and the week ending date of the first week of the individual's benefit year. Such notice shall further contain information as to the proportion of benefits chargeable to the employer's experience account in ratio to the earnings of such individual from such employer and shall advise such employer of the employer's right to protest such claim and the payment of any benefits thereon and of the place and time within which protest must be made and the form and contents thereof. **An employer in an individual's base period is entitled to protest the individual's claim for benefits.**

(d) Whenever a determination is made with respect to the validity of any claim for benefits, or the eligibility of any claimant for benefits, which involves the cancellation of wage credits or benefit rights, the imposition of any disqualification, period of ineligibility or penalty, or the denial thereof, a notice in writing shall promptly be mailed to such claimant, **to each base period employer**, and to each employer directly involved or connected with the issue raised as to the validity of such claim, the eligibility of such claimant for benefits, or the imposition of a disqualification period of ineligibility or penalty, or the denial thereof. Such employer or such claimant may protest any such determination within such time limits and in such manner as provided in IC 22-4-17-2 and upon said protest shall be entitled to a hearing as provided in IC 22-4-17-2 and IC 22-4-17-3.

(e) Every employer shall be mailed a monthly report of benefit charges which shall contain an itemized statement showing the names of individuals to whom benefits were paid and charged to the experience account of such employer, the weeks with respect to which each such individual received benefits, the amount thereof, and the total amount of benefits charged to such employer's said account during the period covered by such report.

(f) Following the computation of rates of contribution for employers for each calendar year, each employer shall be mailed not later than

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ninety (90) days after the effective date of such rates a notice in writing setting out the employer's rate of contribution for such year, computed by the department as of the preceding June 30, together with sufficient information for such employer to determine and compute the amount of a voluntary payment required from such employer in order to qualify for and obtain a lower rate of contribution for such year and also advising such employer of the length of time within which or last date upon which said voluntary payment will be received or can be made.

SECTION 47. IC 22-4-20-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Whenever the commissioner shall consider any account or claim for contributions ~~or skills 2016 training assessments under IC 22-4-10.5-3, or both,~~ against an employer, and any penalty or interest due thereon, or any part thereof, to be uncollectible, written notification containing appropriate information shall be furnished to the attorney general by the commissioner setting forth the reasons therefor and the extent to which collection proceedings have been taken. The attorney general may review such notice and may undertake additional investigation as to the facts relating thereto, and shall thereupon certify to the commissioner an opinion as to the collectibility of such account or claim. If the attorney general consents to the cancellation of such claim for delinquent contributions, ~~or skills 2016 training assessments, or both,~~ and any interest or penalty due thereon, the board may then cancel all or any part of such claim.

(b) In addition to the procedure for cancellation of claims for delinquent contributions ~~or skills 2016 training assessments, or both,~~ set out in subsection (a), the board may cancel all or any part of a claim for delinquent contributions ~~or skills 2016 training assessments, or both,~~ against an employer if all of the following conditions are met:

- (1) The employer's account has been delinquent for at least seven (7) years.
- (2) The commissioner has determined that the account is uncollectible and has recommended that the board cancel the claim for delinquent contributions. ~~or skills 2016 training assessments, or both.~~

(c) When any such claim or any part thereof is cancelled by the board, there shall be placed in the files and records of the department, in the appropriate place for the same, a statement of the amount of contributions, ~~skills 2016 training assessments,~~ and any interest or penalty due thereon, and the action of the board taken with relation thereto, together with the reasons therefor.

SECTION 48. IC 22-4-29-2 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. In addition to all other powers granted to the commissioner by this article, the commissioner or the commissioner's authorized representatives shall have the power to make assessments against any employing unit which fails to pay contributions, interest, ~~skills 2016 training assessments under IC 22-4-10.5-3~~, or penalties as required by this article, or for additional contributions and ~~skills 2016 training assessments~~ due and unpaid, which assessment is considered prima facie correct. Such assessments shall consist of contributions ~~skills 2016 training assessments under IC 22-4-10.5-3~~, and any interest or penalties which may be due by reason of section 1 of this chapter. ~~or the skills 2016 training assessment and interest due under IC 22-4-10.5~~. Such assessment must be made not later than four (4) calendar years subsequent to the date that said contributions, ~~skills 2016 training assessments~~, interest, or penalties would have become due, except that this limitation shall not apply to any contributions, ~~skills 2016 training assessments~~, interest, or penalties which should have been paid with respect to any incorrect report filed with the department which report was known or should have been known to be incorrect by the employing unit.

SECTION 49. IC 22-4-31-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. No injunction to restrain or delay the collection of any contributions ~~skills 2016 training assessments under IC 22-4-10.5-3~~, or other amounts claimed to be due under the provisions of this article shall be issued by any court.

SECTION 50. IC 22-4-32-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. In the event of any distribution of any employer's assets pursuant to an order of any court under the laws of this state including but not necessarily limited to any receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceeding, contributions and ~~skills 2016 training assessments under IC 22-4-10.5-3~~ then or thereafter due shall be paid in full prior to all other claims except claims for remuneration.

SECTION 51. IC 22-4-32-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. No final report or act of any executor, administrator, receiver, other fiduciary, or other officer engaged in administering the assets of any employer subject to the payment of contributions under this article and acting under the authority and supervision of any court shall be allowed or approved by the court unless such report or account shows and the court finds that all contributions, interest, ~~skills 2016 training assessments under~~

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~~IC 22-4-10.5-3~~, and penalties imposed by this article have been paid pursuant to this section, and that all contributions ~~and skills 2016 training assessments~~ which may become due under this article are secured by bond or deposit.

SECTION 52. IC 22-4-32-19, AS AMENDED BY P.L.108-2006, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 19. (a) The department may grant an application for adjustment or refund, make an adjustment or refund, or set off a refund as follows:

(1) Not later than four (4) years after the date upon which any contributions ~~skills 2016 training assessments~~ under ~~IC 22-4-10.5-3~~, or interest thereon were paid, an employing unit which has paid such contributions ~~skills 2016 training assessments~~, or interest thereon may make application for an adjustment or a refund of such contributions ~~skills 2016 training assessments~~, or an adjustment thereon in connection with subsequent contribution payments. ~~or skills 2016 training assessments~~. The department shall thereupon determine whether or not such contribution ~~or skills 2016 training assessment~~, or interest or any portion thereof, was erroneously paid or wrongfully assessed.

(2) The department may grant such application in whole or in part and may make an adjustment, without interest, in connection with subsequent contribution payments ~~or skills 2016 training assessments~~, or refund such amounts, without interest, from the fund. Adjustments or refund may be made on the commissioner's own initiative.

(3) Any adjustments or refunds of interest or penalties collected for contributions due under IC 22-4-10-1 shall be charged to and paid from the special employment and training services fund created by IC 22-4-25. ~~Any adjustments or refunds of interest or penalties collected for skills 2016 training assessments due under IC 22-4-10.5-3 shall be charged to and paid from the skills 2016 training fund established by IC 5-28-27-3.~~

(4) The department may set off any refund available to an employer under this section against any delinquent contributions, payments in lieu of contributions, ~~skills 2016 training assessments~~, and the interest and penalties, if any, related to the delinquent payments and assessments.

(b) Any decision by the department to:

- (1) grant an application for adjustment or refund;
- (2) make an adjustment or refund on its own initiative; or

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(3) set off a refund;
constitutes the initial determination referred to in section 4 of this chapter and is subject to hearing and review as provided in sections 1 through 15 of this chapter.

(c) If any assessment has become final by virtue of a decision of a liability administrative law judge with the result that no proceeding for judicial review as provided in this article was instituted, no refund or adjustment with respect to such assessment shall be made.

SECTION 53. IC 22-4-32-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20. The contributions, penalties, ~~skills 2016 training assessments under IC 22-4-10.5-3~~, and interest due from any employer under the provisions of this article from the time they shall be due shall be a personal liability of the employer to and for the benefit of the fund and the employment and training services administration fund.

SECTION 54. IC 22-4-32-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. (a) As used in this section:

(1) "Dissolution" refers to dissolution of a corporation under IC 23-1-45 through IC 23-1-48 **or dissolution under Indiana law of an association, a joint venture, an estate, a partnership, a limited liability partnership, a limited liability company, a joint stock company, or an insurance company (referred to as a "noncorporate entity" in this section).**

(2) "Liquidation" means the operation or act of winding up a corporation's **or entity's** affairs, when normal business activities have ceased, by settling its debts and realizing upon and distributing its assets.

(3) "Withdrawal" refers to the withdrawal of a foreign corporation from Indiana under IC 23-1-50.

(b) The officers and directors of a corporation effecting dissolution, liquidation, or withdrawal **or the appropriate individuals of a noncorporate entity** shall do the following:

(1) File all necessary documents with the department in a timely manner as required by this article.

(2) Make all payments of contributions ~~and skills 2016 training assessments under IC 22-4-10.5~~ to the department in a timely manner as required by this article.

(3) File with the department a form of notification within thirty (30) days of the adoption of a resolution or plan. The form of notification shall be prescribed by the department and may require information concerning:

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- (A) the corporation's **or noncorporate entity's** assets;
- (B) the corporation's **or noncorporate entity's** liabilities;
- (C) details of the plan or resolution;
- (D) the names and addresses of corporate officers, directors, and shareholders **or the noncorporate entity's owners, members, or trustees**;
- (E) a copy of the minutes of the shareholders' meeting **or the noncorporate entity's meeting** at which the plan or resolution was formally adopted; and
- (F) such other information as the board may require.

The commissioner may accept, in lieu of the department's form of notification, a copy of Form 966 that the corporation filed with the Internal Revenue Service.

(c) Unless a clearance is issued under subsection (g), for a period of one (1) year following the filing of the form of notification with the department, the corporate officers and directors **of a corporation and the chief executive of a noncorporate entity** remain personally liable, subject to IC 23-1-35-1(e), for any acts or omissions that result in the distribution of corporate **or noncorporate entity** assets in violation of the interests of the state. An officer or director **of a corporation or a chief executive of a noncorporate entity** held liable for an unlawful distribution under this subsection is entitled to contribution:

- (1) from every other director who voted for or assented to the distribution, subject to IC 23-1-35-1(e); and
- (2) from each shareholder, **owner, member, or trustee** for the amount the shareholder, **owner, member, or trustee** accepted.

(d) The corporation's officers' and directors' **and the noncorporate entity's chief executive's** personal liability includes all contributions, ~~skills 2016 training assessments~~, penalties, interest, and fees associated with the collection of the liability due the department. In addition to the penalties provided elsewhere in this article, a penalty of up to thirty percent (30%) of the unpaid contributions and skills 2016 training assessments may be imposed on the corporate officers and directors **and the noncorporate entity's chief executive** for failure to take reasonable steps to set aside corporate assets to meet the liability due the department.

(e) If the department fails to begin a collection action against a corporate officer or director **or a noncorporate entity's chief executive** within one (1) year after the filing of a completed form of notification with the department, the personal liability of the corporate officer or director **or noncorporate entity's chief executive** expires. The filing of a substantially blank form of notification or a form

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containing misrepresentation of material facts does not constitute filing a form of notification for the purpose of determining the period of personal liability of the officers and directors of the corporation **or the chief executive of the noncorporate entity.**

(f) In addition to the remedies contained in this section, the department is entitled to pursue corporate assets that have been distributed to shareholders **or noncorporate entity assets that have been distributed to owners, members, or beneficiaries,** in violation of the interests of the state. The election to pursue one (1) remedy does not foreclose the state's option to pursue other legal remedies.

(g) The department may issue a clearance to a corporation **or noncorporate entity** effecting dissolution, liquidation, or withdrawal if:

(1) the:

(A) officers and directors of the corporation have; **or**

(B) **chief executive of the noncorporate entity has;**

met the requirements of subsection (b); and

(2) request for the clearance is made in writing by the officers and directors of the corporation **or chief executive of the noncorporate entity** within thirty (30) days after the filing of the form of notification with the department.

(h) The issuance of a clearance by the department under subsection (g) releases the officers and directors **of a corporation and the chief executive of a noncorporate entity** from personal liability under this section.

SECTION 55. IC 22-4-32-24, AS AMENDED BY P.L.108-2006, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24. (a) This section applies to notices given under sections 4, 7, 8, and 9 of this chapter.

(b) As used in this section, "notices" includes mailings pertaining to:

(1) the assessment of contributions, ~~skills 2016 training assessments under IC 22-4-10.5-3,~~ penalties, and interest;

(2) the transfer of charges from an employer's account;

(3) successorships and related matters arising from successorships;

(4) claims for refunds and adjustments;

(5) violations under IC 22-4-11.5;

(6) decisions; and

(7) notices of intention to appeal or seek judicial review.

(c) If a notice under this chapter is served through the United States Postal Service, three (3) days must be added to a period that commences upon service of that notice.

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(d) The filing of a document with the unemployment insurance appeals division or review board is complete on the earliest of the following dates that apply to the filing:

- (1) The date on which the document is delivered to the unemployment insurance appeals division or review board.
- (2) The date of the postmark on the envelope containing the document if the document is mailed to the unemployment insurance appeals division or review board by the United States Postal Service.
- (3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the unemployment insurance appeals division or review board by a private carrier.

SECTION 56. IC 22-4-33-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. Except as provided in IC 22-4-39, any agreement by an individual to waive, release or commute ~~his~~ **the individual's** rights to benefits or any other rights under this article is void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this article ~~or skills 2016 training assessments under IC 22-4-10.5-3~~ from the employer is void. No employer may make or require or accept any deduction from the remuneration of individuals in ~~his~~ **the employer's** employ to finance the employer's contributions ~~or skills 2016 training assessments under IC 22-4-10.5-3~~ required from ~~him~~, **the employer**, or require or accept any waiver by any individual in ~~his~~ **the employer's** employ of any right under this article.

SECTION 57. IC 22-4-37-3, AS AMENDED BY P.L.108-2006, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) Should:

- (1) the Congress of the United States amend, repeal, or authorize the implementation of a demonstration project under 29 U.S.C. 49 et seq., 26 U.S.C. 3301 through 3311, 42 U.S.C. 301 et seq., or 26 U.S.C. 3101 through 3504, or any statute or statutes supplemental to or in lieu thereof or any part or parts of said statutes, or should any or all of said statutes or any part or parts thereof be held invalid, to the end and with such effect that appropriations of funds by the said Congress and grants thereof to the state for the payment of costs of administration of the department are or no longer shall be available for such purposes;
- (2) the primary responsibility for the administration of 26 U.S.C. 3301 through 26 U.S.C. 3311 be transferred to the state as a

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demonstration project authorized by Congress; or

(3) employers in Indiana subject to the payment of tax under 26 U.S.C. 3301 through 3311 be granted full credit upon such tax for contributions or taxes paid to the department;

then, beginning with the effective date of such change in liability for payment of such federal tax and for each year thereafter, the normal contribution rate under this article shall be established by the department and may not exceed three and one-half percent (3.5%) per year of each employer's payroll subject to contribution. With respect to each employer having a rate of contribution for such year pursuant to terms of IC 22-4-11-2(b)(2)(A), IC 22-4-11-2(b)(2)(B), IC 22-4-11-2(c), IC 22-4-11-3, IC 22-4-11-3.3, **IC 22-4-11-3.5**, and IC 22-4-11.5, to the rate of contribution, as determined for such year in which such change occurs, shall be added not more than eight-tenths percent (0.8%) as prescribed by the department.

(b) The amount of the excess of tax for which such employer is or may become liable by reason of this section over the amount which such employer would pay or become liable for except for the provisions of this section, together with any interest or earnings thereon, shall be paid and transferred into the employment and training services administration fund to be disbursed and paid out under the same conditions and for the same purposes as is other money provided to be paid into such fund. If the commissioner shall determine that as of January 1 of any year there is an excess in said fund over the money and funds required to be disbursed therefrom for the purposes thereof for such year, then and in such cases an amount equal to such excess, as determined by the commissioner, shall be transferred to and become part of the unemployment insurance benefit fund, and such funds shall be deemed to be and are hereby appropriated for the purposes set out in this section.

SECTION 58. IC 22-4-43 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 43. Employer Notification Before Plant Closings and Mass Layoffs

Sec. 1. This chapter applies to plant closings and mass layoffs that are scheduled to occur after September 30, 2009.

Sec. 2. As used in this chapter, "Act" refers to the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq., as amended and in effect on January 1, 2009, including any regulations issued under the Act.

Sec. 3. The terms used in this chapter have the meaning set forth

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in the Act, unless given a different meaning in this chapter or in rules adopted under the authority of this chapter.

Sec. 4. (a) An employer shall provide notice under this chapter in the same circumstances, in the same manner, and to the same entities as an employer that is required to provide notice under the Act.

(b) An employer is exempt from providing notice under this chapter in the same circumstances in which an employer is exempt from providing notice under the Act.

Sec. 5. (a) An employer required to provide notice under this chapter shall serve the notice not later than sixty (60) days before the plant closing or mass layoff to which the notice applies.

(b) An employer required to provide notice under this chapter shall provide the notice to all the following:

- (1)** Each representative of the affected employees at the time of the notice. If the affected employees do not have a representative at the time of the notice, the employer shall provide notice to each affected employee.
- (2)** The department.
- (3)** The chief elected official of the unit of local government within which the closing or layoff is to occur.
- (4)** Any other person that federal or state law, rule, or regulation requires receive notice of a plant closing or mass layoff.

(c) The notice required under this chapter must contain at least the following information:

- (1)** The name and address of the employment site where the plant closing or mass layoff will occur.
- (2)** The name and telephone number of an official of the employer who can be contacted for further information.
- (3)** A statement as to whether the planned employment loss is expected to be permanent or temporary and, if an entire plant is to be closed, a statement to that effect.
- (4)** A statement of the reasons for the plant closing or mass layoff.
- (5)** The expected date of the first employment loss and the anticipated schedule for making employment terminations, layoffs, and reductions in hours of work.
- (6)** The name, Social Security number, and job title of each affected employee.
- (7)** The number of affected employees in each job classification.

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(8) A statement as to the rights of an affected employee concerning wages, severance pay, benefits, pensions, bumping rights, and other terms of employment that relate to the termination, layoff, or reduction in the number of hours of work, including any rights based on a collective bargaining agreement or an existing employer policy.

(9) The name of each representative of the affected employees, including the name and address of the chief elected officer of each representative.

(10) A statement as to the employment available to affected employees at any other site operated by the employer, including information regarding the benefits, pay, other terms and conditions of the employment, and the location of the other employment.

(11) Any other information requested by the department.

(d) Notices to the department must be in writing on a form prescribed by the commissioner and submitted to the department online using a web site designated by the department to receive the notices. The commissioner shall make the form available for use by employers not later than September 30, 2009.

Sec. 6. The department shall compel compliance with this chapter by requesting the attorney general or the prosecuting attorney of the county within which a plant closing or mass layoff is occurring to file an action in the name of the state for injunctive relief against an employer that fails to provide the notice required by this chapter.

Sec. 7. (a) Except as provided in subsection (b) or when disclosure is required by an order of a court, any information obtained under this chapter by the department or a unit of local government is confidential, may not be published, and is not open to public inspection in any manner that discloses an affected employee's identity.

(b) The department may provide a notice or any information obtained under this chapter to any of the following in the regional workforce area (as defined in IC 22-4.5-2-9.5) where a plant closing or mass layoff will occur in order to provide employment, training, and other services to affected employees:

- (1) A regional operator (as defined in IC 22-4.5-2-9.3).
- (2) A regional workforce board (as defined in IC 22-4.5-2-9.7).
- (3) A service provider (as the term is used in IC 22-4.5-7).
- (4) A provider of direct client services (as the term is used in IC 22-4.5-7).

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SECTION 59. IC 22-4.1-4-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a) This section applies after December 31, 2009.**

(b) As used in this section, "contractor" means:

- (1) a sole proprietor;**
- (2) a partnership;**
- (3) a firm;**
- (4) a corporation;**
- (5) a limited liability company;**
- (6) an association; or**
- (7) another legal entity;**

that engages in construction and is authorized by law to do business in Indiana. The term includes a general contractor, a subcontractor, and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.

(c) The department shall cooperate with the:

- (1) department of labor created by IC 22-1-1-1;**
- (2) department of state revenue established by IC 6-8.1-2-1;**
- and**
- (3) worker's compensation board of Indiana created by IC 22-3-1-1(a);**

by sharing information concerning any suspected improper classification by a contractor of an individual as an independent contractor (as described in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

(d) For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

(e) An officer or employee of the department who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

SECTION 60. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 5-28-27; IC 22-4-5-3; IC 22-4-10.5; IC 22-4-12-2.1; IC 22-4-15-8; IC 22-4-17-10.

SECTION 61. **An emergency is declared for this act."**

Delete pages 2 through 21.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1379 as printed February 17, 2009.)

HERSHMAN, Chairperson

Committee Vote: Yeas 9, Nays 3.

EH 1379—LS 7558/DI 96+



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